

No. 11954

United States
Court of Appeals

for the Ninth Circuit

GARFIELD C. BARNETT,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division

FILED

AUG 26 1948

No. 11954

United States
Court of Appeals
for the Ninth Circuit

GARFIELD C. BARNETT,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division

No. 11954

United States
Court of Appeals
for the Ninth Circuit

GARFIELD C. BARNETT,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

PAGE

Appeal:

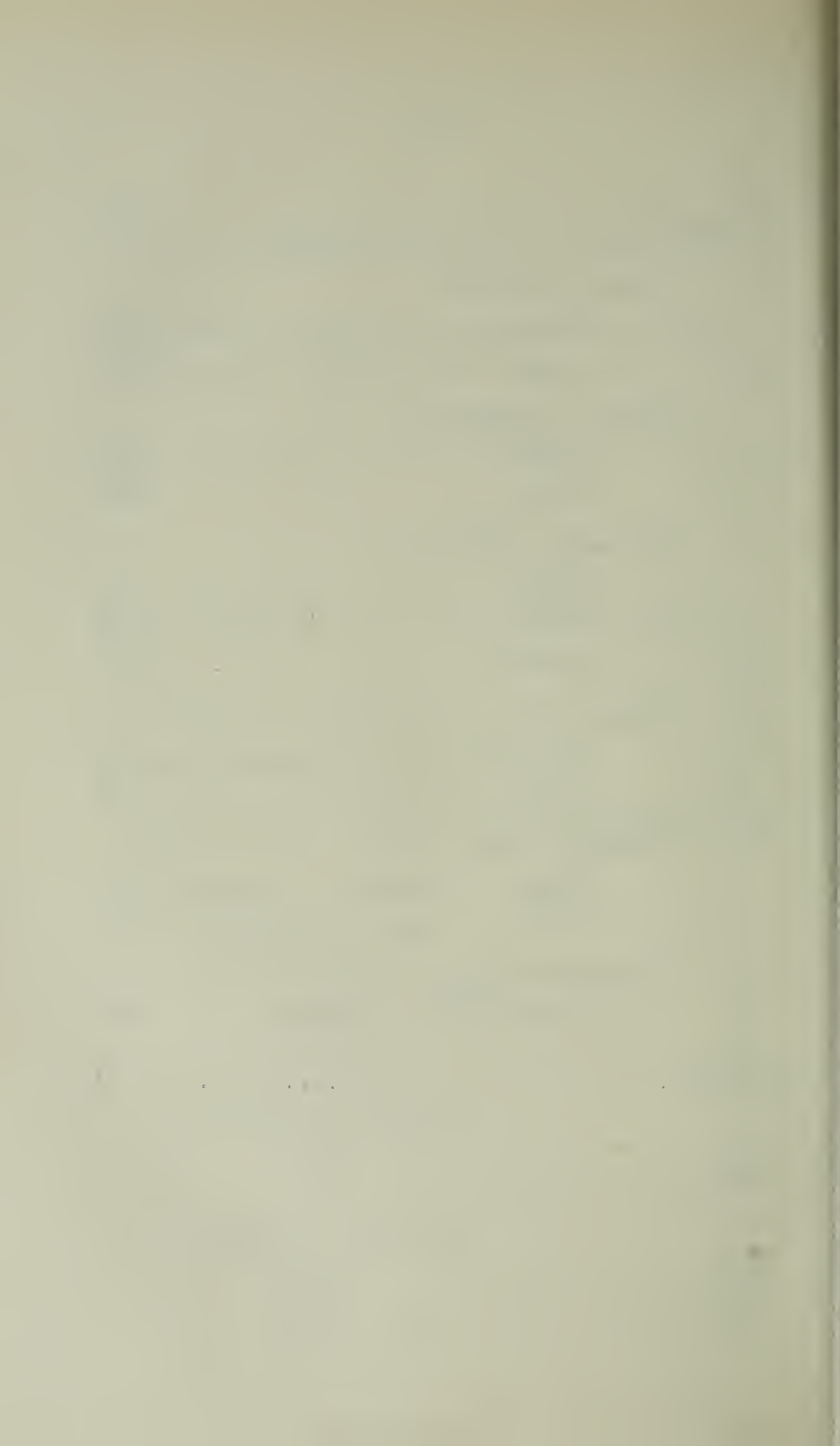
Certificate of Clerk to Transcript of Record on	16
Notice of	14
Order Extending Time for Filing Record on	15
Statement of Points to be Relied Upon on..	182
Arraignment and Plea.....	5
Certificate of Clerk to Transcript of Record on Appeal	16
Indictment	2
Journal Entries of May 13, 1948, Showing Pro- ceedings Had on Passing of Sentence:	
As to Defendant Douglas.....	7
As to Defendant Macartney.....	8
Judgment and Sentence.....	12
Motion for Judgment Notwithstanding the Ver- dict or for a New Trial.....	10
Names and Addresses of Attorneys.....	1

	PAGE
Notice of Appeal.....	14
Order Denying Motion for Judgment Notwithstanding the Verdict or for a New Trial....	11
Order Extending Time to File Record on Appeal	15
Plea	5
Statement of Points to be Relied Upon on Appeal	182
Transcript of Proceedings.....	17
Court's Instructions to the Jury.....	157
Stipulation re Testimony of Hugo Ringstrom	122
Witnesses for Plaintiff:	
Crisler, Allyn B.	
—direct	96
—cross	103
—redirect	109
Douglas, Leonard A.	
—direct	141
—cross	152
Giordano, Henry L.	
—direct	110
—cross	120

Witnesses for Plaintiff—(Cont'd)

Goode, Joseph E.	
—direct	85
—cross	94
Graben, Walter G.	
—direct	127
—cross	138
Macartney, Ralph R., Jr.	
—direct	17
—cross	33
—redirect	45
Naylon, Harvey	
—direct	46
—cross	72
Naylon, Jeanne	
—direct	124
—cross	126
Ringstrom, Hugo	
—Stipulation re Testimony of....	122

Verdict	9
---------------	---



NAMES AND ADDRESSES OF COUNSEL

DAILEY & CONROY,

Attorneys for Appellant,
Stokes Building,
Everett, Washington.

J. CHARLES DENNIS and
HARRY SAGER,

Attorneys for Appellee,
1017 United States Court House,
Seattle 4, Washington. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

United States District Court, Western District of
Washington, Northern Division

No. 47526

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GARFIELD C. BARNETT, RALPH R.

MACARTNEY, JR., and LEONARD A.

DOUGLAS,

Defendants.

INDICTMENT

The Grand Jury Charges:

COUNT I

On or about February 7, 1948, at Everett, Washington, Garfield C. Barnett, Ralph R. Macartney, Jr., and Leonard A. Douglas, sold, bartered and exchanged to Joseph E. Goode the following narcotic drugs:

- 1 bottle containing 189 $\frac{1}{2}$ gr. morphine sulphate tablets
- 1 bottle containing 293 $\frac{1}{6}$ gr. morphine sulphate tablets
- 1 bottle containing 501 $\frac{1}{4}$ gr. morphine sulphate tablets
- 1 bottle containing 85 $\frac{1}{8}$ gr. morphine sulphate tablets
- 63 $\frac{1}{2}$ gr. morphine sulphate tablets
- 1 bottle containing 177 gr. powdered opium
- 1 bottle containing 51 $\frac{1}{4}$ gr. codeine sulphate tablets

- 1 bottle containing 100 $\frac{1}{4}$ gr. codeine phosphate tablets
- 1 bottle containing 100 $\frac{1}{2}$ gr. codeine sulphate tablets
- 1 bottle containing 502 $\frac{1}{2}$ gr. codeine sulphate tablets
- 1 bottle containing 40 copavin tablets
- 1 bottle containing 100 5-mg. dolophine tablets
- 1 bottle containing 39 copavin capsules
- 1 bottle containing 93 acetidine with codeine phosphate tablets

and said sale, barter, and exchange was not made pursuant to the written order of Joseph E. Goode upon a form issued for that purpose by the Secretary of the Treasury of the United States.

All in violation of 26 USC 2554(a) and 2557(b) (1).

COUNT II

On or about and during the period from January 6, 1948, to February 7, 1948, both dates included, at Everett, Washington, and other places in Snohomish County, Washington, and at Seattle, Washington, Garfield C. Barnett, Ralph R. Macartney, Jr., and [2] Leonard A. Douglas, hereinafter called the defendants, conspired each with the other to commit an offense against the United States, to-wit, to violate the provisions of Section 2554(a) of Title 26, United States Code, in this, that said defendants conspired to sell, barter and exchange the narcotic drugs described in the first county of this Indictment to Joseph E. Goode, Harvey Neylon, and other persons to these grand jurors unknown, such

sale, barter and exchange not to be made pursuant to the written order of the person or persons to whom said narcotics were to be sold, bartered or exchanged upon a form issued for that purpose by the Secretary of the Treasury of the United States.

That after the formation of said conspiracy, and in order to effect the object thereof, the defendants committed certain overt acts as follows:

1. During the period from January 6, 1948, to January 16, 1948, at Everett, Washington, the defendants Leonard A. Douglas and Ralph R. Macartney Jr., had a conversation with each other.

2. On or about January 17, 1948, the defendant Garfield C. Barnett drove from Everett, Washington, to the home of the defendant Leonard A. Douglas at Snohomish, Washington.

3. On or about January 17, 1948, at Snohomish, Washington, the defendant Leonard A. Douglas delivered to the defendant Garfield C. Barnett a box containing the drugs described in Count I of this Indictment.

4. At some date between January 16, 1948, and February 7, 1948, the exact time being to the grand jurors unknown, at Everett, Washington, the defendants Garfield C. Barnett, and Ralph R. Macartney, Jr., held a conversation with Harvey Neylon.

5. On or about February 7, 1948, at Everett, Washington, the defendant Garfield C. Barnett gave to Harvey Neylon two bottles, each containing a narcotic drug.

6. On or about February 7, 1948, at Everett, Washington, [3] the defendant Garfield C. Barnett delivered to Joseph E. Goode a box containing the drugs described in the first count in this Indictment.

All in violation 18 USC 88.

A True Bill.

/s/ JOHN PAUL JONES,
Foreman.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ HARRY SAGER,
Assistant United States Attorney.

[Endorsed]: Filed Mar. 10, 1948. [4]

In the District Court of the United States for the
Western District of Washington, Northern
Division

Court Room No. 1.

Honorable John C. Bowen, presiding.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GARFIELD C. BARNETT,
RALPH R. MACARTNEY, JR.,
LEONARD A. DOUGLAS,

Defendants.

ARRAIGNMENT AND PLEA

Now on this 9th day of April, 1948, J. Charles Dennis, United States Attorney, appearing for the

Government and Stanley L. Conroy, Attorney, appearing for the Defendant Garfield C. Barnett, this cause comes on before the Court for Arraignment and Plea of the Defendant Garfield C. Barnett who is present. The Defendant states at this time that his true name is Garfield C. Barnett and that he has received a copy of the Indictment. The reading of the indictment is waived. The Defendant enters a plea of not guilty to Counts I and II.

This cause also comes on before the Court for the Arraignment and Plea of the Defendant Ralph R. Macartney, Jr. The Defendant is present without counsel and in custody. The Court advises the Defendant of his right to have counsel. The Defendant states that he is without means. Whereupon the Court appoints Lew E. Flanders, an attorney to represent him and the Defendant accepts Mr. Flanders as his attorney.

Later: The Defendant is present with his counsel and states at this time that his true name is Ralph R. Macartney, Jr. The reading of the Indictment is waived and the Defendant enters a plea of not guilty to Counts I and II.

This cause also comes on before the Court for the Arraignment and Plea of the Defendant Leonard A. Douglas. The matter is called. The Defendant is not present. A Doctor's Certificate is filed. At the [5] request of Mr. Dennis, the cause as to this Defendant is continued subject to call.

The above cause is set for trial on May 11, 1948, at 10:00 a.m.

In the District Court of the United States for the
Western District of Washington, Northern
Division

Court Room No. 1.

Honorable John C. Bowen, presiding.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEONARD A. DOUGLAS,

Defendant.

SENTENCE PRONOUNCED
JUDGMENT SIGNED

Now on this 13th day of May, 1948, J. Charles Dennis, United States Attorney, appearing for the Government, this cause comes on before the Court for the imposition of judgment and sentence on Count II of the Indictment. The defendant Leonard A. Douglas is present in custody of the Deputy United States Marshal Schwerdfeld and he is represented by his counsel Kenneth A. MacDonald, who was appointed by the Court to assist the Defendant. The matter is called. James C. Wilcox, Probation Officer is present with the pre-sentence report. The further circumstances are related. A letter, dated May 13, 1948 from Dr. William Weinstein is filed.

It is the judgment of the Court, that the defendant is guilty to Count II of the Indictment, upon his plea of guilty thereto and he is convicted.

Sentence is pronounced.

Later: Written Judgment and Order of Probation as orally pronounced is signed in the presence of the Defendant and his counsel and he is remanded into the custody of the United States Marshal.

On oral motion of the Government, Count I is dismissed.

Journal No. 38. Page 505. [7]

In the District Court of the United States for the
Western District of Washington, Northern
Division

Court Room No. 1.

Honorable John C. Bowen, presiding.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH R. MACARTNEY, JR.,

Defendant.

SENTENCE PRONOUNCED
JUDGMENT SIGNED

Now on this 13th day of May, 1948, J. Charles Dennis, United States Attorney, appearing for the Government, this cause comes on before the Court for the imposition of judgment and sentence on Count II of the Indictment. The defendant Ralph R. Macartney, Jr., is present in custody of the Deputy United States Marshal Schwerdfield and he is represented by his counsel Lew E. Flanders, who

was appointed by the Court to assist the Defendant. The matter is called. James C. Wilcox, Probation Officer is present with the pre-sentence report and the further circumstances are related.

It is the judgment and sentence of the Court, that the defendant is guilty to Count II, upon his plea of guilty thereto and he is convicted.

Sentence is pronounced.

Later: Written Judgment, Sentence and Commitment is signed in the presence of the Defendant and his counsel. The defendant is remanded into the custody of the United States Marshal.

On the oral motion of the Government, Count I is dismissed.

Journal No. 38. Page No. 505 [8]

District Court of the United States,
Western District of Washington,
Northern Division

No. 47526

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GARFIELD C. BARNETT,

Defendant.

VERDICT

We, the Jury in the Above-Entitled Cause, Find the defendant Garfield C. Barnett is guilty as

charged in Count I of the Indictment; and further find the defendant Garfield C. Barnett is guilty as charged in Count II of the Indictment.

/s/ PERRY W. PURSELL,
Foreman.

[Endorsed]: Filed May 13, 1948. [9]

United States District Court, Western District of
Washington, Northern Division

No. 47526

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GARFIELD C. BARNETT,

RALPH R. MACARTNEY, JR., and

LEONARD A. DOUGLAS,

Defendant.

MOTION

Comes now the above named defendant, Garfield C. Barnett, and moves the Court for a judgment notwithstanding the verdict herein, or, in the alternative, for a new trial in the above entitled cause on the grounds and for the following reasons:

I.

Misconduct of the jury.

II.

Newly discovered evidence material for said defendant which he could not, with reasonable diligence, have discovered and produced at the trial.

III.

Accident and surprise which defendant could not have guarded against.

IV.

Error of law occurring at the trial and duly excepted to by the defendant.

V.

The court erred in its instructions to the jury given on its own motion.

VI.

The verdict is contrary to law and the evidence and denotes passion or prejudice.

DAILEY & CONROY,
Attorneys for Defendant Barnett.

[Endorsed]: Filed May 17, 1948. [10]

In the District Court of the United States for the
Western District of Washington, Northern
Division

Court Room No. 1.

Honorable John C. Bowen, presiding.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GARFIELD C. BARNETT,

Defendant.

HEARING HAD—SENTENCE PRONOUNCED
JUDGMENT SIGNED

Now on this 24th day of May, 1948, J. Charles Dennis, United States Attorney, and Harry Sager,

Assistant United States District Attorney, appearing for the Government and A. E. Dailey, appearing for the Defendant Garfield C. Barnett, this cause comes on before the Court for hearing on Defendant's Motion for Judgment notwithstanding the verdict or in the Alternative, for a New Trial. The matter is called, argued and denied.

Journal No. 38. Page 538. [11]

United States District Court, Western District of
Washington, Northern Division

No. 47526

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GARFIELD C. BARNETT,

Defendant.

JUDGMENT, SENTENCE AND
COMMITMENT

On this 24th day of May, 1948, the attorney for the Government, and the defendant, appearing in person, the defendant being represented by A. E. Dailey and Stanley L. Conroy, his attorneys, the Court finds the following:

That prior to the entry of his plea, a copy of the Indictment was given to the defendant and that the defendant entered a plea of not guilty and a trial was held, resulting in a verdict of guilty as to Counts I and II thereof; that the Probation Officer

of this district has made a presentence investigation and report to the Court; now, therefore,

It Is Adjudged that the defendant has been convicted by jury verdict and is guilty and is convicted of the offense of violation of Section 88, Title 18, U.S.C., conspiracy to violation Sec. 2554a, Title 26, U.S.C., and violation of Section 2554a, Title 26, U.S.C., and violation of Section 2554a, Title 26, U.S.C., as charged in Counts I and II of the Indictment, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

It Is Adjudged and Ordered that on Count I of the Indictment the defendant be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment in the United States Penitentiary [12] at McNeil Island, Washington, or in such other like institution as the Attorney General or his authorized representative may by law designate, for the period of Three (3) Years and Nine (9) Months.

It Is Further Adjudged and Ordered that on Count II of the Indictment the defendant be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment in the United States Penitentiary at McNeil Island, Washington, or in such other like institution as the Attorney General of the United States or his authorized representative may by law designate, for the period of One (1) Day, the service of the sentence on Count II to be concurrent

with, and not consecutive to, the service of the sentence on Count I herein.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of this Judgment, Sentence and Commitment to the United States Marshal or other qualified officer, and that said copy serve as the commitment of the defendant.

Done in Open Court this 24th day of May, 1948.

JOHN C. BOWEN,

United States District Judge.

Presented by:

HARRY SAGER,

Asst. United States Attorney.

Violation: (Narcotics).

[Endorsed]: Filed May 24, 1948. [13]

United States District Court, Western District of
Washington, Northern Division

No. 47526

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GARFIELD C. BARNETT, et al.,

Defendants.

NOTICE OF APPEAL

To the above named plaintiff and its attorneys:

You Are Hereby Notified that the above named defendant, Garfield C. Barnett, elects to and does

hereby appeal from the judgment and sentence of the above entitled court, in the above entitled court, and from all proceedings therein had and done.

Dated this 24th day of May, 1948.

DAILEY & CONROY,
Attorneys for Defendant, Garfield C. Barnett.

[Endorsed]: Filed May 25, 1948. [14]

[Title of District Court and Cause.]

ORDER EXTENDING TIME

This matter having been presented before the Honorable John C. Bowen, judge of the above entitled court, and the United States District Attorney having approved the granting of an extension of time for the filing of the record on appeal herein,

It Is Now Ordered, Adjudged and Decreed that the above named defendant be and he is hereby granted twenty (20) days additional time in which to file the record on appeal.

Done in Open Court this 25th day of June, 1948.

/s/ JOHN C. BOWEN,
Judge.

Approved June 25, 1948.

/s/ J. CHAS. DENNIS,
U. S. Attorney.

[Endorsed]: Filed June 25, 1948. [19B]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing typewritten transcript of record, consisting of pages numbered from 1 to 19, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above entitled cause as is required by designation of counsel filed and shown herein, as the same remain of record and on file in the Office of the Clerk of said District Court at Seattle, and that the same, together with the reporter's transcript of testimony and proceedings transmitted as a part hereof, constitute the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit:

Clerk's fees: 8 pages at 40c, \$3.20; 12 pages at 10c, \$1.20; Notice of Appeal, \$5.00; total, \$9.40.

I hereby certify that the above amount has been paid to me by the attorney for the appellant.

In witness whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 25th day of June, 1948.

(Seal) MILLARD P. THOMAS,
Clerk.

By /s/ TRUMAN EGGER,
Chief Deputy Clerk.

[Title of Court and Cause.]

Before The Honorable John C. Bowen, District Judge.

TRANSCRIPT OF PROCEEDINGS AT TRIAL

Appearances: J. Charles Dennis, United States Attorney, and Harry Sager, Assistant United States Attorney, appearing for and on behalf of the plaintiff. [1*] A. E. Dailey and Stanley L. Conroy (Messrs. Daily and Conroy) appearing for and on behalf of defendant, Garfield C. Barnett. [2]

Seattle, Washington, May 11, 1948
2:00 o'clock, p.m.

RALPH R. MACARTNEY, JR.,
called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Sager:

Q. Will you state your name [3]

* Page numbering appearing at foot of page of original certified Reporter's Transcript.

(Testimony of Ralph R. Macartney, Jr.)

A. Ralph R. Macartney, Jr.

Q. Mr. Macartney, are you named as one of the defendants in this case? A. I am.

Q. Do you know Mr. Garfield C. Barnett?

A. I do.

Q. When did you become acquainted with him?

A. I became acquainted with him when I came to Everett, Washington.

Q. About when was that?

A. Oh, approximately December,—about the 20th of December, I would say.

Q. Of last year? A. Yes, sir.

Q. What was the occasion of your becoming acquainted with Mr. Barnett?

A. Well, to retain him to represent me in this grand larceny case with which I was charged.

Q. Where were you at that time?

A. In the Snohomish County Jail.

Q. Did he represent you in that matter?

A. Well, up to a certain point.

Q. Was he your attorney for part of the time?

A. He was.

Q. Do you know Leonard A. Douglas? [4]

A. I do.

Q. Where did you become acquainted with him?

A. In the Snohomish County Jail.

Q. About when?

A. Oh, let me think. Oh, in January.

Q. Of this year? A. Yes.

Q. He was an inmate of the jail there at that time, too, was he? A. Yes, he was.

(Testimony of Ralph R. Macartney, Jr.)

Q. Mr. Macartney, did you have a conversation with Mr. Douglas while the two of you were in jail there concerning narcotic drugs? A. We did.

Q. Will you tell us what that conversation was?

Mr. Dailey: I object, if Your Honor please, unless the defendant was present at the time.

The Court: Is there any response to the objection?

Mr. Sager: The charge here is one of conspiracy, Your Honor. I will state to the Court that evidence will connect Barnett with this conspiracy. This conversation is a part of the conspiracy.

Mr. Dailey: If Your Honor please, the defendant on trial has two charges against him. It [5] seems to me that only his part, if any, covered by either one or the other of the charges could possibly be material.

Any conversation between two people who are not joint defendants here at the present time could not be properly heard.

The Court: Do you make that objection to one or both of the defendants?

Mr. Dailey: Both, Your Honor.

The Court: The court is of the opinion, subject to the statement by counsel offering the evidence, that it is admissible under Count 2. At some time during the progress of the trial and not later than the court instructs the jury finally as to the law covering the case, the court intends to give a cautionary instruction in the usual form as to this matter and as to this point. At any time before

(Testimony of Ralph R. Macartney, Jr.)

that, if counsel request the court to do so in proper form, the court will give that cautionary instruction in connection with this point. Subject to that condition, this objection is overruled so far as the allegations of Count 2 are concerned.

In that connection, the jury is now advised that you are not to consider this question and the answer thereto, and any line of testimony of this [6] nature as any evidence against the defendant on trial respecting the allegations in Count 1. It is received in evidence subject to the allegations in Count 2, subject to a cautionary instruction to be later given by the court.

Any time that counsel wish to request that cautionary instruction, I will be glad to consider it.

If the form is appropriate, I will say to counsel now that I will give such a cautionary instruction.

Mr. Dailey: Exception, if Your Honor please.

The Court: Allowed.

Q. (By Mr. Sager): What was that first conversation in jail with Douglas concerning narcotics?

A. Douglas came over to my cell, which was across from his, and said that he had found a package containing a lot of narcotics and wanted to know whether I knew whether or not he could sell them and what they were worth. I told him I knew a user who lived in the Ritz Hotel in Seattle to whom he could probably sell them. That was the first conversation.

Q. Did you tell him who the user was?

A. Yes. [7]

(Testimony of Ralph R. Macartney, Jr.)

Q. Who was it?

A. I told him his name was Harvey. I don't know whether I told him his last name or not, but I know his last name was Naylor.

Q. Do you know how to spell that?

A. No, I don't.

Q. Did you tell him what experience you had had with Naylor so that you knew he was a user?

Mr. Dailey: That is objected to as being leading, if Your Honor please.

The Court: Objection sustained.

Q. (By Mr. Sager): Did you tell him anything further than the name was Naylor?

A. Yes.

Q. What was that?

A. I told him that I had seen him—not using it—but all “goofed up” around there and understood that he was a user, and that I was out at one time with a nurse who I found out was a user and had a lot of narcotics, and I had her put out of the hotel. I told him about that fact and he tried to get me at that time to find that nurse again and give the narcotics to him.

Mr. Dailey: If Your Honor please, I object [8] to what someone tried to do or tried to get him to do as calling for a conclusion of the witness and not responsive to the question.

The Court: That objection is sustained, unless he is telling what he said or what the other person said. The objection is sustained.

Q. (By Mr. Sager): Just the conversation be-

(Testimony of Ralph R. Macartney, Jr.)

tween you and Douglas is what I want, Mr. Macartney.

A. He said, "What do you think it is worth?" and he said it was worth, he thought, \$10. Douglas showed me this magazine and said, "That is what it is worth, also."

Q. \$10 for how much?

A. For an ounce,—for a grain, I believe.

Q. Did Douglas say anything about how much he had?

A. If I remember, he said he had about 1,000 grains.

Q. Did he say where he had them?

A. Yes. He said he found them and that they were buried underneath a house on the North Bend Road.

Q. Was there any further conversation between you at that time as to how he might dispose of them?

A. No; with the exception of the fact that I told him the only place I thought we could dispose of them would be to Naylor. [9]

Q. Was anything said as to how he could contact Naylor? A. Not at that time.

Q. Did you have any further conversation with Douglas? A. Yes.

Q. Was that at the same place,—in jail?

A. In the local jail.

Q. What was that conversation?

A. That was the conversation that I would tell my attorney about it.

(Testimony of Ralph R. Macartney, Jr.)

Q. You are speaking about the conversation between you and Douglas?

A. Between Douglas and myself.

Q. What was that conversation?

A. The extent of it was that I told Douglas that I would see my attorney about it and tell him that you said you had all of these drugs and so forth; and that "you had found them out here," and tell my attorney about it and he could get in touch with Naylor.

Q. Did you tell him who your attorney was?

A. Yes; he knew.

Q. Who did you say it was?

A. I said it was Barnett.

Q. Did you have any later—

The Court: Just a moment. There is no identification of Barnett. [10]

Q. (By Mr. Sager): Is that the defendant here? A. Garfield Barnett, yes.

Q. He was acting as your attorney at that time?

A. He was.

Q. Did you have any further conversations with Douglas concerning this matter?

A. Well, yes, we did.

Q. When was that?

A. Oh, a few days later, I would assume. I don't remember the dates.

Q. What was that conversation?

A. Well, we were talking in there and Douglas was going out,—going out of the jail. He said that he would deliver those drugs to Barnett in the box

(Testimony of Ralph R. Macartney, Jr.)
in which he said that they were placed,—which he didn't do.

Q. Did you at any time talk to Mr. Barnett about these drugs? A. I did.

Q. What was your conversation on the first occasion with Mr. Barnett?

A. Well, I told him that Douglas said that he had found these drugs, and he told me they were contained in a shoe box—I believe it was a shoe box,—and that he would bring them in and deliver them to Barnett, [11] but I wasn't positive, of course, if he had the drugs. I didn't know whether he had them or didn't have them at that time, and I hadn't seen them. He said he would take them in and deliver them to Barnett at his house and then Barnett could get in touch with Naylor.

Q. Did you tell him his name?

A. Yes: I don't remember whether I told him his whole name or I told him his first name. I told him his name was Harvey and that he lived in the Ritz Hotel and described him to him.

Q. Did you tell him what you knew about Naylor? A. I told him.

Q. What did he say?

A. Well, he said he would see what he could do.

Q. Did that conversation that you have just related with Mr. Barnett,—when did that occur as nearly as you can state, with respect to the time when Douglas was released from jail?

A. Well, I would say approximately,—I don't

(Testimony of Ralph R. Macartney, Jr.)

know exactly, but I would say two or three days, maybe, before—if I am not mistaken.

Q. Do you know when Douglas was released from jail? A. No, I don't remember the date.

Q. After he was released from jail, did you again see [12] him?

A. The only time I saw him was in the kitchen downstairs, and he was down there for a meal. I didn't have any conversation.

Q. Did you see Mr. Barnett, following Douglas' release? A. I did.

Q. Did you have a conversation with him concerning Douglas or these drugs?

A. I believe—I may be mistaken—but I think this is correct. I believe the conversation I had with him was first about Douglas; and the next conversation was about the drugs.

Q. What was the conversation about the drugs?

A. I believe that the first time I saw him, that he said Douglas hadn't delivered the drugs.

Q. Had not?

A. Had not delivered the package, that is right.

Q. I didn't get that.

A. That Douglas had not delivered the package as Douglas said he was going to do. And the second time that I saw him—I think I am right about this—the second time I saw him was when he was put under arrest and came in to the County Jail.

Q. Do you recall Barnett? A. Yes. [13]

Q. Had you had any conversation with him prior to that time— A. Oh, yes.

(Testimony of Ralph R. Macartney, Jr.)

Q. —concerning the drugs or concerning Nalon?

A. Yes, we had.

Q. Will you tell what that conversation or conversations was.

A. He advised me that he had talked to Naylor. I believe he went to Seattle and talked to Naylor, or didn't find him. Then he came back to Everett. Naylor came over to Everett one day, and he came in the jail there with Barnett. At that time—we were in a visiting room there—and at that time Naylor said, "How do I know that you have got any?" First he said, "Is this man all right?" and I said, "Yes."

Q. Who said that? A. Naylor.

Q. Who did he refer to? A. Barnett.

Q. Was Barnett there at that time?

A. Barnett was sitting right there.

Q. Go ahead. What was the rest of that conversation?

A. Then he said, "How do I know you have got them?" I said, "Barnett says he has got them." He said, [14] "How do I know?" and I said to Barnett, "Give him two or three of the bills and prove it to him or let him see them." And he said he would. So then he talked about price. Naylor said, "Well, they are worth about \$4."

Q. For how much?

A. A grain; \$4 a grain. I said, "Well, they are worth more money than that." I said, "You told me \$10 when you tried to get me to get ahold of some one time." And I said, "This magazine said

(Testimony of Ralph R. Macartney, Jr.)

\$10." And he said, "It is only \$4 on one sale." He said, "There has to be a 3-way cut with me." He said, "I want the morphine for my share, my part of it." He said, "I don't want the money."

"Well," I said, "see, what you can do."

Well, then, the next conversation I had with Barnett, Douglas had called me and said he had a Chinaman that he had done business with for some time. This is what Barnett told me. But the next time I saw Barnett, nothing had happened.

The next time I talked to Barnett was when he was in there and I said to him, "Well, I don't think he is going to do anything about it,"—that I would be afraid of the man—that you had better forget him." And that was Naylor. I don't [15] know if these are in sequence or not but those are the conversations that we had.

Then, when I saw him that night, I came out from the kitchen and the Deputy there at the desk said, "Your attorney was here and went upstairs to be fingerprinted."

Q. Before that, Mr. McCartney, did you at one time have a conversation with Barnett in which he said he had received the drugs from Douglas?

A. Yes. He said he had received them.

Q. What else did he say at that time concerning that?

A. Well, he told me,—I told him that Douglas had insisted to me that he had found the drugs. He said at that time that he thought Douglas possibly had stolen them because there were no signs

(Testimony of Ralph R. Macartney, Jr.)

on the box that they had been buried, such as Douglas advised me.

Q. Will you state whether he had examined the contents of the box?

A. Yes. He had a little list there of everything that was in them.

Q. Did he describe to you the containers in the box?

A. No, he didn't describe the containers in the box. He just had a little list of what was in them.

Q. Did he say anything about the containers at all? [16]

A. No, I don't remember him saying anything about the containers. He had a list of what was in there,—an eighth of a grain of this and a quarter grain of that, a half grain of this, and so many ounces of that, on a little slip of paper.

You saw him the night he was arrested?

A. Yes.

Q. I am speaking of Barnett? A. Yes.

Q. Had you had a conversation with him that same day prior to his being brought to the jail?

A. I don't remember whether I had that day or not. That night he was arrested?

Q. That is right.

A. Yes; I think that was the day. He said that a man would be over. I am not positive about that day but I think I am correct. He said that a man would be over that would buy them, that night. I am pretty sure,—that may not have been the day, but I think it was.

(Testimony of Ralph R. Macartney, Jr.)

Q. Did he say who advised him of that?

A. Naylon.

Q. Did you talk to him after he was brought to the jail that night? A. I did. [17]

Q. What conversation did you have with him at that time?

A. Well, when he came upstairs from down in the kitchen, the Deputy at the desk said "Your attorney is upstairs being fingerprinted."

I didn't know what for. I had no idea right then. I thought he was kidding me. Then he came back downstairs, and I think he had a come out from in at the other room. I called to him—

Q. Who are you talking about?

A. Barnett. I called to him and asked him what he was there for and he said he was under arrest for narcotics. I asked him, "What shall I do?" and he said, "Just tell them the truth." So then I went into the far room with the two narcotics agents.

Q. During any of these conversations with Mr. Barnett, was there any discussion as to what would be done with the proceeds of the sale of the drugs?

A. Yes, there was.

Q. What was that conversation?

A. The essence of the conversation was—

Mr. Dailey: I object to that, if Your Honor please. That calls for a conclusion. The essence of the conversation means only his conclusion in regard to it. [18]

(Testimony of Ralph R. Macartney, Jr.)

The Court: You ought to first exhaust his recollection as to what was said.

Q. (By Mr. Sager): Tell us, the best that you can recall, what you said and what Mr. Barnett said concerning that matter?

A. Well, the split would have been a third, a third, and a third.

Q. To whom?

A. A third to Douglas and a third to Barnett and a third to me. Douglas and I decided that that would be equitable.

Q. You mean previously?

A. Yes. Then Barnett said, "Well, my attorney's fees for the trial will come out of it."

Q. For what trial was that?

A. The Grand Larceny trial.

Q. The charge that you were then being held on?

A. If it went to trial.

The Court: Some of your statements do not appear to be answered. I don't know whether the record shows them to be questions or just statements. You should not make statements. You should ask questions and then, if you wish them answered, the court will have the witness answer them if he can. [19]

Q. (By Mr. Sager): You stated that you and Douglas had agreed that that division would be accurate, is that correct? A. That is right.

Q. When had you agreed to that, you and Douglas?

(Testimony of Ralph R. Macartney, Jr.)

A. Well, previous to the time that Douglas left the jail, if Barnett agreed to take the drugs.

Q. Was Douglas ever present when you and Barnett discussed this matter? A. No.

Q. So this conversation you have related as to division of the proceeds was between you and Barnett, is that correct? A. Yes, that is correct.

Q. Mr. McCartney, on the occasion when Mr. Barnett told you that somebody was coming out that night to buy these drugs, do you recall whether or not he said anything about whether the price had been agreed on or anything of that nature?

A. Yes, I think he said he was going to get \$6,000.

Q. Now, following the conversation you had with Mr. Barnett the night he was arrested and brought to the jail there, did you have any subsequent conversation with him concerning these narcotics? A. Yes, we did. [20]

Q. When was that?

A. Well, I think that was about three days later, Your Honor.

Q. After his arrest? A. Yes.

Q. Where did that conversation occur?

A. In the visiting quarters, there.

Q. At the jail? A. Yes.

Q. What was said on that occasion?

A. Well, Barnett was in a dither, naturally, and so was I. I said to him at the time, "Well, I got you into this." He said, "Well, I don't know whether I can have the funds to defend myself and

(Testimony of Ralph R. Macartney, Jr.)

so forth." I said, "Well, you might try my father." Then I got to talking to him and I said, "What are you going to use for a defense?"

Mr. Dailey: Will you speak a little louder, Mr. Macartney? I have trouble hearing you.

A. (Continuing) I said, "What are you going to use for a defense?" And he said, "Well, I don't know. I think I will suggest that I thought you were in a dope ring or something." I said, "That is enough for me. I don't want any of that." I said, "You are on your own and I will go on my own." To [21] my recollection, that is the last conversation I had with him.

Q. Did you say anything to him at that time with reference to the conversation you had with him the night of the arrest?

A. I told him that I had told him the truth in that room. I told him different stories later. But I gave him a song and dance in the sheriff's office one day. I told him I would take the blame for the whole thing. But apparently I was going to take the blame for the whole situation, and my reputation had been impaired enough with this grand larceny thing, without taking the narcotics thing also, so I just washed my hands of it.

Q. Mr. Macartney, what happened to your grand larceny charge up there?

A. I went to court and had the court appoint me an attorney and pled guilty.

Q. What was the result of that?

(Testimony of Ralph R. Macartney, Jr.)

A. I was sentenced to fifteen years in the Washington State Penitentiary.

Q. Is that where you are now?

A. That is where I am now.

Q. You were brought here under the custody of the Marshal? A. That is right, yes. [22]

Q. And you have entered a plea of guilty to the conspiracy count in this charge here?

A. I entered a plea of guilty because technically I was guilty. I never saw the drugs and still haven't. I was guilty under the law on the second count and pled guilty.

Mr. Dailey: If the court please, I object. I think the witness should confine his answer to the question.

The Court: The question was what your plea was or something to that effect.

Mr. Sager: You may inquire.

Cross Examination

By Mr. Dailey:

Q. You were first arrested on what date in December, in Snohomish County?

A. I don't remember.

Q. But it was sometime around Christmastime or shortly before that, was it not?

A. I believe it was December 20th, if I am not mistaken.

Q. You were arrested then on two charges of grand larceny?

A. Yes. One charge and two counts.

Q. You got in touch with Mr. Barnett as your

(Testimony of Ralph R. Macartney, Jr.)

attorney, [23] did you not? A. I did.

Q. And you had him get in touch with your father? A. I did.

Q. Where does your father live?

Q. Klamath Falls, Oregon.

Q. You got in touch with regard to his getting in touch with your father for some fees or for yourself and to help you? A. So far as I know.

Q. Did you authorize him to get in touch with your father to get back this something like \$5,000 that you were charged with taking?

A. Did I authorize him to?

Q. Yes.

A. I wrote my father and asked him.

Q. You wrote your father and asked him if he would send you \$5,000?

A. I also asked Barnett to ask him.

Q. Barnett showed you a letter that he got from your father, didn't he? A. He did.

Q. Your father refused to give you \$5,000 to pay back what you were accused of stealing?

A. That is right. [24]

Q. But did he send Mr. Barnett \$250 on account as your attorney, didn't he? A. That is right.

Q. And it was understood between Mr. Barnett and your father that your father would pay him his attorney's fees, is that right?

A. It was understood between my father and myself.

Q. What?

A. Between my father and myself.

(Testimony of Ralph R. Macartney, Jr.)

Q. Didn't he show you a letter written by your father to him wherein he said he was enclosing \$250 on account of attorney's fees?

A. He also wrote me and said that he would see that I had legal representation.

Q. Your case had not yet been set for trial?

A. No. As a matter of fact, I hadn't pled.

Q. You hadn't pled. There was to be a jury term in January—that is, the next month—is that right?

A. I am not familiar with that.

Q. You don't know that. Now, how long had you been in the County Jail when you met Douglas?

A. I should say three weeks, I would imagine.

Q. You had been in there three weeks?

A. I would imagine that.

Q. That then, would be along toward the middle of [25] January when you first met Douglas?

A. Well, about that I would say.

Q. And he was in jail there in the County Jail under that charge, is that right?

A. He was.

Q. Do you know what he was charged with?

A. No. I believe he was charged with robbery.

Q. Either robbery or burglary?

A. Yes.

Q. He was ill at the time, wasn't he?

A. Yes.

Q. When was it that he left the county jail?

A. I don't remember the date he left. He left when he was sentenced.

Q. When was it that he told you that he had found these narcotics?

A. Oh, about—well, not long before he left—not

(Testimony of Ralph R. Macartney, Jr.)

too long before. I would say maybe two weeks or ten days afterwards. I don't remember exactly.

Q. And you had talked with him, had you, about you being able to sell it? A. No.

Q. Why would he suggest it to you, then, do you know? A. No.

Q. But he just, without being any better acquainted with [26] you than having met you there, suggested that you dispose of it for him, is that right? A. No.

Q. What did he suggest?

A. He asked me if I knew where he could sell them.

Q. What did you tell him?

A. I tol him about this man Naylon.

Q. You told him about Naylon? A. Yes.

Q. What other conversation did you have with him; did he tell you to go ahead and get in touch with Naylon?

A. No. He just said, "See what you can do."

Q. Then how long after that was it that you suggested that he see Mr. Naylon?

A. I was not convinced at the time that he had any drugs.

Q. You weren't convinced of it? A. No.

Q. But you asked Mr. Barnett, from time to time, if Douglas had left a package with him for you, didn't you?

A. I asked Mr. Barnett if Douglas had left a package with him for me?

Q. Yes. A. No, I think not.

(Testimony of Ralph R. Macartney, Jr.)

Q. Didn't he tell you that Douglas had left a package [27] with him?

A. No. Not until the night—until about three nights after Douglas had left there. Then he came down to the jail, and he then told me that he had gone out to Douglas' house and picked up a package.

Q. Didn't you ask him if he had?

A. Did I ask him?

Q. Yes. A. No.

Q. Didn't you ask him if Douglas had left a package? A. No, I did not.

Q. All right. He came to the jail and told you that he had been out to Douglas' house and picked up a package? A. That is right.

Q. Then you suggested to Barnett that he get in touch with Nylon?

A. At that time—well, I had told him about that before.

Q. You had told him about Nylon before?

A. Yes.

Q. Why would you tell him about Nylon if you didn't believe that a package existed?

A. Because, in case the package did exist and contained the drugs. [28]

Q. You had told him how long before—when was the first time you told him, in other words, to get in touch with Nylon?

A. I don't remember exactly.

Q. You told him, as a matter of fact, that Nylon owed you money, did you not?

(Testimony of Ralph R. Macartney, Jr.)

A. I did not.

Q. And you told him that Naylon ought to be willing to help you? A. Absolutely not.

Q. But he did get in touch with Naylon and brought him up to the County Jail to see you, didn't he?

A. He brought Naylon up to the County Jail, yes.

Q. And you and Naylon talked together?

A. And Barnett.

Q. Barnett was on the other side of the room, was he not? A. He was not.

Q. Did he take any part in the conversation?

A. He did.

Q. What part did he take in it?

A. Barnett was standing to the right. Naylon was next to me and the conversation took place that I just told you about a minute ago. Naylon said to me, "Is Barnett all right?" and I said, "Yes." And then we discussed the price. [29]

Q. Then you and Naylon discussed price?

A. And Barnett was there.

Q. Barnett didn't say anything about price, did he? A. I don't remember.

Q. Was it your understanding then, that you had any right to any part of this?

A. Was it my understanding that I had any right to——?

Q. Yes. A. No.

Q. It was not your understanding that you owned any part of it?

(Testimony of Ralph R. Macartney, Jr.)

A. I beg your pardon?

Q. It was not your understanding that you owned any part of these drugs?

A. No, I didn't own any part of the drugs.

Q. It was not your understanding that you were going to own any part of them?

A. Not of the drugs, no.

Q. How did it happen, then, that you should be cut in one-third?

A. Why should I be cut in one-third?

Q. Yes.

A. Because I was the only person that knew Naylor.

Q. I see. But Naylor was to have a third?

A. Not to my knowledge. [30]

Q. I thought you said Naylor was going to take his third out in stuff?

A. Not from us—whoever he sold it to.

Q. You discussed that, and he was to collect from whoever he sold it to?

A. That is right. And Barnett took part in that conversation and discussion and was there.

Q. Douglas was to have a third? A. Yes.

Q. And you were to have a third? A. Yes.

Q. Why were you to have a third if you had no interest in it, do you know?

A. I beg your pardon?

Q. Were you acting, then, as salesman and to get your third as a commission or a profit or something of that kind? A. No.

(Testimony of Ralph R. Macartney, Jr.)

Q. Someone was just cutting you in?

A. I would have gotten attorney's fees in case of a trial and that would have been my extent.

Q. Of course, you knew that your father was paying him his attorney's fees, didn't you?

A. I had no idea that my father was going to any expense for trial. [31]

Q. You were trying very hard, after your father refused you, to raise \$5,000 to pay back Mr. Richmond, weren't you? A. No.

Q. You weren't intending to pay it back?

A. It was impossible at that time.

Q. What?

A. It was impossible at that time.

Q. You didn't want to pay it back?

A. I had the desire to pay it back.

Q. As a matter of fact, you wrote him a letter offering to pay it back in installments of \$400 a month, didn't you? A. That is right.

Q. Where were you going to get the \$400 a month? A. By working.

Q. How much money did you earn in '47, Mr. Macartney? A. In when?

Q. '47?

A. In '47? Let me see, I don't remember correctly, but I would say about—I would say approximately with everything about \$11,000.

Q. That is not counting the ten that you got from Mr. Richmond? A. What ten? [32]

Q. Well, approximately ten—or \$5,000, rather,

(Testimony of Ralph R. Macartney, Jr.)

that you got from Mr. Richmond. A. No.

Q. That wasn't counting that?

A. No. This was a security business. I worked for Schwellen & Wilcox—managed an office for them.

Q. Now, you told Mr. Barnett to give Mr. Naylor some of the narcotics that he had, did you not?

A. That is right.

Q. What for?

A. For the same reason I mentioned a minute ago.

Q. What reason?

A. Mr. Naylor wanted to know whether Mr. Barnett had the narcotics or not.

Q. He wasn't sure whether he had them?

A. That is right.

Q. Why would Naylor come up to talk to you about it?

A. Because of the fact I lived in the same hotel he lived in.

Q. He was a friend of yours in other words?

A. I wouldn't say he was a friend of mine. He was an acquaintance.

Q. Well, you had been around together some, hadn't you? A. Never.

Q. You sent Barnett to him, didn't you? [33]

A. Yes.

Q. You told him Barnett wanted to see him, didn't you?

(Testimony of Ralph R. Macartney, Jr.)

A. No. I didn't. I thought it would be better if Naylon came and saw me.

Q. And you never had seen Douglas before you met him there in the County Jail?

A. No, I hadn't seen him.

Q. Do you remember talking with me when I came to the County Jail with your brother after Mr. Barnett was arrested?

A. I remember having a conversation with you.

Q. Did you tell your brother and I that Barnett had nothing to do with this at all and that it was a shame that he was in trouble?

A. No, I didn't tell him that.

Q. What did you say?

A. I told him and my brother at the time that I thought Barnett was the victim of an unfortunate circumstance in being connected with it, and my feelings haven't changed.

Q. Then the next day or a day or two afterwards, you went over and pled guilty to one of the counts of grand larceny? A. That is correct.

Q. And you are now confined in the penitentiary. Have [34] you ever been confined in the penitentiary before? A. No, I have not.

Q. Were you at one time committed to the Veterans' Hospital in Oregon? A. I was.

Q. When was that? A. In 1947, I believe.

Q. You were first committed August 14th, 1946, were you not? A. '46 is right, yes.

Q. And you were found to be——

(Testimony of Ralph R. Macartney, Jr.)

A. Incompetent.

Q. You were found mentally incompetent?

A. That is correct.

Q. How long were you confined in Oregon?

A. I think I stayed there about three months.

Q. Then you were allowed to go home on a visit, weren't you? A. No.

Q. What happened then? A. No. I left.

Q. What happened then; how did you get away from there? A. I walked away.

Q. You never were discharged?

A. That is correct. [35]

Q. You never have yet been discharged from that place? A. That is correct.

Q. You don't receive any compensation or pension from your service?

A. No. I have a claim number in.

Q. Are you a married man? A. I am not.

Q. I beg your pardon? A. I am not.

Q. Recently divorced?

A. That is correct.

Q. Do you have a family? A. I do.

Q. How much of a family?

A. Two children.

Q. You have two former wives and four children, don't you? A. I do not.

Q. Weren't you married before?

A. I was.

Q. No children?

A. I had one child by my first wife.

(Testimony of Ralph R. Macartney, Jr.)

Q. Counsel asked you about it and you said that you were in here, I believe, yesterday, and pled guilty to the second count in this Information?

A. That is correct.

Q. Have you been sentenced on that?

A. I have not.

Q. Have you been promised anything in the way of mitigation of sentence because of your plea of guilty?

A. I have not.

Q. Have you been promised anything in the way of mitigation of your sentence for appearing and testifying as a witness in this trial?

A. I have not.

Q. Have you talked with anyone about it?

A. I talked to the attorney about it.

Q. You have talked to the District Attorney about it?

A. Yes.

Q. Has he made any promises to you?

A. None whatsoever.

Q. None whatsoever?

A. That is correct.

Q. Has he told you what he would do or attempt to do in your behalf?

A. He has not told me a thing. That is the first statement that I have given concerning this case was yesterday.

Q. What?

A. The first statement that I have given to him concerning [37] this case was yesterday.

Q. Was yesterday?

A. That is correct.

Q. As a matter of fact, you have talked with

(Testimony of Ralph R. Macartney, Jr.)

him quite a little while ago when you were brought over here to enter your plea, didn't you?

A. I did not.

Q. Well, at any rate you pled guilty to the second count in this indictment, and the first one was dismissed, is that right?

A. I pled guilty to the second count of the indictment, and the first count, as I understood the judge to say, was postponed.

Q. What? A. Was postponed.

Q. It is understood that it has to be dismissed, is it not?

A. I have no understanding whatsoever.

Q. No one told you that?

A. No one told me it was dismissed. I just heard what the judge said.

Mr. Dailey: I think that is all. [38]

Redirect Examination

By Mr. Sager:

Q. You were represented by an attorney in your appearance in this court? A. I was.

Mr. Sager: That is all.

The Court: You may be excused from the witness chair.

(Witness excused.) [39]

HARVEY NAYLON

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

(Testimony of Harvey Naylon.)

Direct Examination

By Mr. Sager:

Q. Will you state your name?

A. Harvey Naylon.

Q. Mr. Naylon, where do you live?

A. 2611½ Fourth Avenue.

Q. Is that the Ritz Hotel?

A. No, it is not.

Q. Have you lived at the Ritz Hotel?

A. Yes, sir.

Q. Here in Seattle? A. Yes, I have.

Q. When were you there?

A. Oh, I moved out about three months ago, something like that.

Q. How long had you lived there prior to that time?

A. Oh, close to three years—two and a half or three years.

Q. Do you know Ralph R. Macartney?

A. I have met him. [40]

Q. Where did you meet him?

A. At the Ritz Hotel.

Q. About when?

A. Oh, some time I believe in January; somewhere around about that time—the first of January.

Q. Mr. Naylon, are you addicted to narcotics?

A. Yes, sir.

Q. How long have you been addicted to nar-

(Testimony of Harvey Naylor.)

cotics? A. About twenty years.

Q. Have you met Mr. Garfield Barnett?

A. Yes, sir.

Q. Do you see him in the court room now?

A. Yes, sir.

Q. Will you point out where he is?

A. He is sitting over there by the second man over there—the man with the glasses.

Q. At the table? A. Yes, sir.

Q. Where did you first meet him?

A. At the Ritz Hotel.

Q. About when?

A. Some time in January—perhaps the first week in January or the middle, something like that.

Q. What was the occasion of your seeing him there at that time? [41]

A. Well, he wanted to see me about buying some narcotics.

Q. Did you talk to him at the hotel on that occasion?

A. A short conversation in regard to it, yes, sir.

Q. Will you speak a little louder, Mr. Naylor?

A. Yes, sir; we did.

Q. Just tell us, if you recall, what that conversation was. A. Well——

The Court: What he said and what you said, relating the conversation as nearly as you can recall it.

A. Well, he said that a friend of his or a client of his and himself had some narcotics that were

(Testimony of Harvey Naylor.)

available to them to the extent of somewhere around one thousand grains, I believe it was, and that they wanted \$10,000 for it, and would I know of anybody that wanted them or could I use them myself. So I told him I would see as to what could be done about it and we made a previous appointment which was perhaps a week or a little after that, that I met him again.

Q. Before you get away from that first conversation, did he say who his client was?

A. This was Mr. Macartney (McCarthy).

Q. Did you know him?

A. I had met him a short time before I met Mr. Barnett. [42]

Q. Did Mr. Barnett say anything to you about your acquaintance with his client?

A. Yes. Apparently, Mr. McCarthy had given him my name, so that is how they come to look me up.

Q. Did he know your name when he came to the hotel? A. Yes. He asked for me.

Q. Did he introduce himself?

A. Yes, he did.

Q. How did he introduce himself to you?

A. He told me his name was Mr. Barnett, and he was an attorney from Everett. We continued on then about the narcotics.

Q. Did he tell you anything more about these narcotics than what you have already stated?

(Testimony of Harvey Naylor.)

A. At the time he didn't tell me too much about them, no.

Q. Did he tell you what they were?

A. Not too much at the time. He just gave me the idea that he had some if I was interested and we made this previous appointment.

Q. Did you make a definite appointment to see him later?

A. Well, I think it was either on the following Tuesday or——

The Court: I believe he asked you if you did or if you did not. What is the fact about that?

A. (Continuing): Yes. We made a previous appointment. [43] I was to call him as soon as I had made some arrangements here in Seattle or wherever it might be in regards to the sale of the morphine.

The Court: What do you mean by the words "previous appointment?"

The Witness: I should correct that, maybe, in this way. I told him that I would call him as soon as I had made some arrangements as to the sale of the narcotics.

The Court: Do you mean a future appointment?

The Witness: Yes, sir.

The Court: Or a past appointment?

The Witness: That would be a future appointment.

The Court: Is that what you mean by the term

(Testimony of Harvey Naylor.)

“previous appointment” that you mentioned before?

The Witness: That is what I meant—that I would call him as soon as I had made some arrangements in regards to the sale of the narcotics.

Q. (By Mr. Sager): How were you to call him?

A. Well, we made—either Tuesday or Friday was the day I was supposed to call.

Q. Mr. Naylor, how were you to get in touch with him—did he say?

A. By telephone; I called him by telephone. I went up [44] there to Everett and called him again from Everett.

Q. About how long was that after the time he saw you at the Ritz Hotel?

A. I would say less than a week.

Q. You went to Everett, is that what I understood you to say? A. Yes, sir.

Q. From where did you call him?

A. Well, sir, I am not sure just where I called him from at that time, whether it was the bus depot or a tavern. I couldn't rightly say. I stopped there some place and took a phone. I am not too well acquainted with Everett.

Q. Was it in Everett that you called?

A. Yes, in Everett. The first time I called from Seattle.

Q. What was your conversation when you called him?

(Testimony of Harvey Naylor.)

A. I asked him when and where I could see him.

Q. What did he say?

A. He told me to come to his office at 5:00 o'clock that evening, and there would be no one there but myself.

Q. Did you go to his office?

A. Yes, sir; about five minutes or ten minutes past 5:00.

Q. Was there anybody present there at that time? [45]

A. As far as I know, himself.

Q. What occurred then at that time?

A. Well, he showed me this box of narcotics that he had.

Mr. Dailey: Will you please speak a little louder?

The Court: Read the answer, Mr. Reporter.

(Last answer repeated by the reporter.)

A. (Continuing): I checked them over to see what was collateral and what was not.

Q. (By Mr. Sager): What was that?

A. What could be sold and what could not—what was good and what wasn't good as far as the market was concerned.

Q. Did you count them or make any estimate of their quantity?

A. Well, we made an estimate of them.

Q. What was that?

A. Oh, there was perhaps,—I think we figured something like 700 or 800 grains altogether,—

(Testimony of Harvey Naylor.)

around in that vicinity. We just guessed at the bottles.

Q. Did you discuss that with Mr. Barnett?

A. Oh, yes.

Q. Just tell what the conversation was as best you recall.

A. Well, we emptied this box of narcotics out on his [46] desk, to see what was good. This was codein and a different assortment of narcotics, some that were good and some that were not good. That is about what that consisted of. We merely took stock of what we had on hand there, and it—as near as we could figure—was around 700 or 800 grains of morphine.

The Court: Of what?

The Witness: That was of morphine.

Q. (By Mr. Sager): What sort of a box were they in?

A. Well, I would say it was a good-sized cigar box—large cigar box.

Q. How were they inside the box—were they in any other container?

A. No. The cigar box was wrapped in a paper was all. And, of course, the box was full of bottles.

Q. Were the tablets in the bottles?

A. Yes, sir; yes, sir, they were.

Q. Did you have any further conversation with Mr. Barnett there at that time?

A. Well, I told him after finding out what he had that I would go back to Seattle and see what

(Testimony of Harvey Naylor.)

I could do in regards to selling them for him. There was a lot of money—he wanted \$10,000 for it and it [47] was a little steep. I tried to get the price down a little. I couldn't meet that kind of a price, myself. It seems as though he couldn't come down on the price.

Mr. Dailey: I object to what his conclusion is.

Q. (By Mr. Sager): Don't state what you thought or your conclusion.

A. I am just——

Q. Just state your conversation.

A. That is what my conversation was—what I am saying. As I said, I would go back to Seattle and call him as soon as I had found someone that wanted the narcotics. I was hoping in the meantime he would see fit to come down on the price, where I could get some.

Q. Did you at that time discuss the price with him?

A. Yes. He wanted \$10,000, and I told him it was clear out of the question to get any part of that. \$10 a grain is rather high any place.

Q. Did anything else occur on that occasion?

A. Well, he gave me a small amount for samples.

Q. How much did he give you?

A. Well, he gave me two bottles of cocaine, one bottle [48] of 100 H.M.C.

Q. What does that mean?

A. That is hyosine, morphine, cactine, I believe.

(Testimony of Harvey Naylor.)

The Court: How much was there of that?

The Witness: I believe there was a bottle of 100 tablets. I believe it was a full bottle.

The Court: What do you call that?

The Witness: H.M.C., that is the stock name of it, "H.M.C."

Q. (By Mr. Sager): I didn't hear, yet.

A. Hyosine, morphine and cactine. That is the three ingredients.

The Court: The last one?

The Witness: Cactine.

The Court: Can you attempt to spell the first and third words of that group?

The Witness: Hyosine?

The Court: Yes. How do you spell it?

The Witness: I would say h-y-a-s-i-n-e. That is as close as I can come to it.

The Court: How would you spell the last word in the group of three—cactine?

The Witness: I can't honestly say. I don't know. [49]

The Court: You may proceed. What else was there in this box besides the two types of products that you have mentioned? Those are samples that he gave you, is that right, two bottles of cocaine, one bottle of tablets of H.M.C., and what else did he give you?

The Witness: He gave me some quarter and a half grains of morphine.

The Court: Did he give you any other samples?

(Testimony of Harvey Naylor.)

The Witness: Not at that time.

The Court: What was it you said this box contained—how much morphine did you say?

The Witness: In the vicinity of 700 to 800 grains, somewhere around there. We didn't count them. We just made an estimate.

The Court: What if anything else did it contain?

The Witness: Well, it had a considerable amount of codeine. I couldn't say as to how much. There was a large amount.

The Court: What else, if anything?

The Witness: A bottle of dolophine.

The Court: Anything else?

The Witness: There was, but I don't recall the different medical names for them. Some were [50] names that I had never heard of before and were strange to me.

(Narcotic drugs in cigar box marked Plaintiff's Exhibit 1 for identification.)

Q. (By Mr. Sager): Mr. Naylor, the bailiff is handing to you Plaintiff's Exhibit 1 for identification. Will you look at that and examine the contents and tell us whether or not that appears to be what you saw in Mr. Barnett's office?

A. That seems to be it, sir. In fact, it is it.

Q. Will you put those all back in the box, then, and return them to the bailiff?

A. Yes. (Witness replaces bottles of narcotics in cigar box.)

Q. Now, Mr. Naylor, did you see Mr. Barnett

(Testimony of Harvey Naylor.)

at any later times after this first visit of yours to Everett?

A. Yes. I went back up again and had another talk with him.

Q. About how much time elapsed between the first visit and the second visit?

A. Well, I don't think it was a week; less than a week, I would say.

Q. Where did you see him on this second occasion?

A. In Everett again, the same way—telephone.

Q. In his office? A. In his office.

Q. About what time of day was it?

A. Well, before I seen him it was again late.

Q. I didn't hear your answer.

A. It was at about the same time in the evening, when there was no one in his office.

Q. What occurred on that occasion?

A. I was trying to get the price down to where I could get ahold of some of that stuff. I didn't succeed. He still wanted \$10,000. I tried to get some samples but I didn't get any more that time, I don't think, if I remember rightly—the second time. So I went away with the same deal, that I would call him as soon as I heard anything. I told him that I knew of a man that might be interested as soon as he returned to town. And so I left again.

Q. Did you know of any such man?

A. No, sir.

Q. Did you have any \$10,000 or any such sum to buy these, Mr. Naylor?

(Testimony of Harvey Naylon.)

A. No—or they wouldn't be here. I would have bought them.

Q. What was your purpose in going back and forth there from time to time? [52]

A. Well, I was trying to get the price down to where I could buy some. I was trying to show him how ridiculous it was to charge \$10.00 a grain for such a large amount. It would be impossible for anyone to pay that much money.

Q. For what purpose did you want the drugs?

A. Well, to use, sir.

Q. Mr. Naylon, I want to refer back to the first case when you went there. Where did he have this box of drugs when he first brought them to you?

A. Oh, they remained more or less of a history as to where they came from. But he would have me wait outside some place for a few minutes, a short time, and when I came in his office he had them on his desk.

Q. You had been in to his office before that?

A. Yes.

Q. Did you see them the first time?

A. My first trip up there?

Q. Well, the first time you went into the office, did he have them in the office on that occasion?

A. On the first trip up there they were there at my first entrance. He had them present at my first entrance there. But the other times, why, I had to wait until he had got them from some place else.

Q. Did he tell you where he had to go to get them?

A. No, sir.

(Testimony of Harvey Naylor.)

Q. What did he have you do while he went for them?

A. Well, I would just wait for a few minutes, five minutes or ten minutes, and then he came back.

Q. Did you wait in his office?

A. No; outside in the hall somewhere.

Q. Did you make other trips up to Everett?

A. Yes, I made another one up there, a third trip. This was the trip that I told him that I had a man with me that was interested in it. I was beginning to see where he was not going to come down in price where I could get any and I was trying to figure how else I could get some of it.

I told him that I had a man interested with the money and that I wanted some of the morphine for my trouble in getting this man. We had a little talk as to when I should get this—before or after the deal.

Well, being there wasn't any deal, I had to convince him in some way to get the morphine first, which I did, and he gave me some more. I was supposed to bring this man back upstairs with me, but as I say I didn't have no one there.

Q. You didn't what? [54]

A. I didn't have any man there. It was just a story. It was untrue about this man. I didn't have a buyer at all. I merely used that as a ruse to get some of this medicine from him which he gave me.

Q. How much did he give you on that occasion?

A. Well, I never really counted it. I poured some out on a paper, and went a little heavy on it and I had to put some back. I didn't count them.

(Testimony of Harvey Naylor.)

I don't know just exactly what quantity it was, sir.

Q. Mr. Naylor, on the occasion of your first visit up there when you examined these drugs, just how carefully did you look them over?

A. Well, I had to look at each and every bottle to see what was an opiate, what was usable and what was not. I looked them over quite carefully. We used paper towels we had there to keep our fingerprints off of them.

Q. Just tell us about that, will you?

A. Which—the fingerprints?

Q. Yes, whatever was said or done concerning that.

A. Well, we didn't want our fingerprints on the bottles.

Q. What is that?

A. We didn't want our fingerprints on the bottles.

Q. Was there anything said about it?

A. Well, yes; in a way. Mr. Barnett had a box of kleenex [55] I guess you would call it—paper towels. We used this kleenex and, as we looked at each bottle, we rubbed any possible prints there might have been on the bottles off as we looked at them which was a good idea.

Q. Did you use the kleenex in handling the bottles—in picking them up? A. Oh, yes.

Q. Did Mr. Barnett? A. Certainly.

Q. Mr. Naylor, on any of these trips to Everett, when you saw Mr. Barnett, did you go to the County Jail?

A. Yes, sir; on the first trip up there we—I forgot to mention that. On our first trip up there, we went to the County Jail—I guess it was the

(Testimony of Harvey Naylon.)

County Jail—it was where this lad was being held.

Q. What lad?

A. This Mr. McCarthey. We went in there. This was before I had seen the morphine. We seen Ralph McCarthey. They brought him out and we talked to him, the three of us. He then first told us how much he wanted for them—\$10,000.

Q. Who told you that?

A. Mr. McCarthey. I didn't argue the point with him.

Q. I have trouble hearing you. [56]

A. I say he was set in his price and so we didn't argue the case at all. I figured I would talk to Mr. Barnett afterwards in regard to that. I figured I would let him say what he wanted to and let it go at that. He wanted \$10,000.

Q. Where were you talking to him at that time?

A. Well, there is a little hallway there between there and the cell I imagine he came out of, and the jailer's desk which is about 20 feet long, the hallway. We were in the center of that hallway, sitting on the table.

Q. Who was there?

A. Mr. McCarthey, Mr. Barnett, and myself.

Q. Did you all participate in the conversation?

A. Most of it, yes, sir.

Q. Was there anything else said there at that time?

A. I don't think anything that I haven't mentioned. It was a short conversation and pertained mostly to the narcotics—as to what he had—how

(Testimony of Harvey Naylor.)

much he had, rather—and how much he wanted for it. That was about all it amounted to.

Q. Do you recall whether or not anything was said about your getting a sample of them at that time?

A. Yes. He told me I could have a sample of them.

Q. Who said that? [57]

A. Mr. McCarthey told Mr. Barnett to give me some. I asked him if it was strictly up to him, on his hands, and he said, “Yes,”—to do anything he said to do.

Q. You asked who?

A. Mr. McCarthey. I didn’t think yet that Mr. Barnett had all of the sale of it. But he told me, to do what he said and it would be all right in regard to the sale of the narcotics.

The Court: You speak of Mr. McCarthey. I don’t believe it has been made plain to me of whom he is speaking.

Q. (By Mr. Sager): Is that Ralph R. Macartney?

A. Macartney. I don’t know just how you pronounce the last name—Macartney or McCarthey. I call him McCarthey.

Q. Was he in jail there at that time?

A. He was in jail in Everett, yes.

Q. Mr. Barnett took you down there to see him?

A. Yes, sir. He took me to the cell to see this Mr. McCarthey.

Q. Had Mr. Barnett previously told you that he

(Testimony of Harvey Naylon.)

represented him as an attorney? A. Yes, sir.

The Court: Have you later seen that man—[58]
Macartney?

The Witness: I haven't seen him since, no, sir.

The Court: You have not?

The Witness: No, sir.

Q. (By Mr. Sager): Mr. Naylon, did you ever discuss during these visits to Everett with Mr. Barnett—did you ever discuss with him where this box of drugs came from?

A. Well, not exactly where they come from. That was more or less of a secret.

Q. Speak a little louder, will you?

A. That was more or less of a secret on his part, I guess.

Mr. Dailey: If Your Honor please, I move that that be stricken. When he says, "I guess" I [59] think he is testifying to a conclusion.

The Court: "But that was more or less a secret on his part, I guess" are words which are now stricken from this record and the jury will disregard those words. Lay them out of your minds.

Q. (By Mr. Sager): Just state what the conversation was, Mr. Naylon.

A. Well, I told him that the narcotics was hot—unquestionably they were hot, and I was still trying to get the cut-down was my reason for telling him that. It stood to reason that they were hot in more ways than one, and I thought by telling him that—

Mr. Dailey: I object, Your Honor.

(Testimony of Harvey Naylor.)

The Court: The objection is sustained. You are permitted to say what was said and not to comment on the reasons therefor or your state of mind except insofar as your state of mind was expressed in words. It is the words you are permitted to state—those said by him or you.

The Witness: That is what I was saying, Your Honor.

The Court: Make it clear that that is what you are saying. Don't make it sound like your [60] comments on what transpired are some attitude.

Q. (By Mr. Sager): You understand the Court's direction, Mr. Naylor; you are to only testify what the conversations were and not what you were thinking or were assuming or anything of that sort.

Now, what was said by you and what was said by him, as nearly as you recall?

A. That is what I tried to say. You asked me the question and I tried to answer it the best I could as to what was said. The words I spoke was what was said. They weren't thought. I said them.

Q. Tell us what you said to Mr. Barnett concerning these drugs?

A. You keep stopping me. I told him that the narcotics were hot and the best thing he could do would be to throw them in the river—as far as he was concerned he would be better off.

Q. Did he make any response to that?

A. Yes. He said perhaps it would be the best thing but he had an interest in them and he was

(Testimony of Harvey Naylor.)

going to go through with it.

Q. Did you state to him any reasons why they were hot?

A. Like I tried to say awhile ago I didn't know where they came from but it stands to reason that they more [61] than likely were stolen.

Q. Did you tell him why?

A. He wouldn't say whether they were or they weren't. I was trying to impress on him that I had an idea that they were plenty hot, trying to get the price down lower. I can't pay \$10,000—but if I could have gotten it down within reasonable reach I would have bought some. That was the whole argument between he and I, as to price, to get it down.

Q. In discussing the price or any transaction that you have made with him, did you at any time ever have any discussion with Mr. Barnett as to what you would get out of it?

A. Well, on our first trip up there—that is when we were talking to Mr. Macartney, when he said he wanted \$10,000 which he said was the price and he knew price, he told me if I would get \$8,000, I could keep \$2,000 for myself.

Q. Who said that to you?

A. Mr. Macartney said that.

Q. Was that down in the jail?

A. In the County Jail, yes, sir.

Q. Was that the occasion you spoke of before when the thre of you were there present?

A. Yes, sir. [62]

(Testimony of Harvey Naylor.)

Q. You stated here previously, Mr. Naylor, that on one occasion you told Mr. Barnett you had a man that might be interested in them.

A. Yes, sir.

Q. And on another occasion you stated, as I recall, that—you advised Mr. Barnett that you had a man down on the street who was ready to buy if you could get the price right?

A. That was my third trip up there; yes, sir.

Q. Did he make any inquiry of you as to who these alleged purchasers were?

A. Only to the extent that I think they were safe to do business with, if that is what you mean.

Q. Yes. Did he inquire where they were from or anything else about them?

A. I don't recall that, sir.

Q. Did he at any time tell you anything concerning his own participation in the sale of these?

A. Do you mean as to what he would benefit?

Q. No. A. What do you mean?

Q. As to what part he was to have in disposing of them.

A. I don't know what you mean. He didn't want to have too much to do with it, at first, if that is what you mean. [63]

Q. What did he say in that connection?

A. Well, in our first meetings, why, in the transaction of actual sale of these narcotics, if and when it came up, he wanted to be in the background as much as possible; that is, he apparently didn't want to be caught. That is what it came down to.

(Testimony of Harvey Naylor.)

Q. What did he say?

A. That is what he said.

Q. How many times did he come down to Seattle to see you?

A. Well, I don't think more than three times. I may be off one; it may have been four, but I think three times would just about cover it, as close as I can recall.

Q. How many times did you see him in Seattle?

A. Did I see him personally?

Q. That is right.

A. Let me see. I don't believe I seen him but once in Seattle. I may be mistaken there again but I can't quite recall only the first time meeting him in Seattle, myself, although he was here more often.

Q. You did see him one time in Seattle?

A. The first time he looked me up, yes, sir.

Q. You are not quite sure whether you saw him again or not in Seattle? [64]

A. The second time he came looking for me, as near as I can recall, and I didn't answer. I let my wife talk to him.

Q. When was that with respect to your third visit to Everett?

A. Well, that is the time that I told him I would be right back with the man, and he had given me some morphine for the supposed transaction and I thought he might be a little mad. I didn't know whether I was going to get punched in the nose or what I was going to get, so I didn't say anything. I let my wife talk to him.

(Testimony of Harvey Naylor.)

Q. Did you go back up to Everett following your visit to Mr. Barnett's office? A. Yes.

Q. Just what occurred prior to that, leading up to that trip?

A. Well, it was perhaps a week later, as near as I recall, about. I called him on the phone from Seattle again and asked him how everything stood.

Q. Where did you call him by phone—from where? A. From where?

Q. That is right.

A. The Narcotic Bureau.

Q. What had you done before you made that call from the Narcotic Bureau? [65]

A. What had I done?

Q. That is right.

A. I am afraid I don't understand what you mean.

Q. Well, how did you get up to the Narcotic Office? A. I came up.

Q. Had you called him before you came up?

A. Oh, yes—I see. Yes, I called Mr. Crisler on the telephone.

Q. Then what happened following that call?

A. He asked me to come up to the office.

Q. Did you see one of the agents before you came up to the office?

A. Yes—Mr.—Henry something.

Q. Giordano?

A. Giordano. He came down to the restaurant and met me.

(Testimony of Harvey Naylor.)

Q. Did you tell him something concerning this matter at that place? A. Yes.

Q. Following that did you come up to the office?

A. Then we came up to the office.

Q. Without telling what you told him, did you report to the narcotic agent as to what had transpired between you and Mr. Barnett?

A. Yes, sir. [66]

Q. Then what was done?

A. Well, I made another phone call to him to see how we stood; to see whether they had sold the narcotics yet or not.

Q. And that call was made from where?

A. That was made from the Narcotic Office.

Q. Who arranged that call?

A. Who arranged that call?

Q. That is right.

A. Let me see—Mr. Crisler was there.

Q. He is one of the Narcotic Agents?

A. Yes, sir. And this Henry Giordano was there. I believe he was the one that put the call through—either him or Mr. Crisler, I believe, put the call through for me to Everett. And when we located him, I believe he was at his home if I am not mistaken. I think it was on a Saturday afternoon. Anyway, his office was closed.

Q. Speak a little louder.

A. His office was closed and we had a little difficulty in getting hold of him, but we finally reached him. I believe at his home.

Q. Then did you talk to him? A. Yes, sir.

(Testimony of Harvey Naylor.)

Q. What was the conversation over the phone?

A. I asked him how things stood between us—whether he still had the narcotics. He said it was the same as it was before. I asked him if he would be interested in taking \$6 a grain for it—that I had a buyer that would take it at \$6 a grain immediately. He said he was tired of fooling around with it, that he would let it go at \$6. So we made an appointment for that same day, which was about 5:00 o'clock that evening I believe, and went up there to Everett.

Q. Where in Everett were you to see him?

A. In his office in Everett.

Q. Did you go up there?

A. Yes, we went straight to his office.

Q. Who went up there?

A. Mr. Goode and myself went into his office.

Q. Who went with you up to Everett?

A. Mr. Goode, Mr. Crisler, Mr. Graben, and Mr. Giordano again.

Q. They are all Narcotics Agents?

A. Narcotics Agents.

Q. When you got to Everett, what did you do?

A. Well, Mr. Goode and I—he was supposed to be the buyer. He and I went up to Mr. Barnett's office. I introduced them.

Q. How did you introduce them? [68]

A. I told him he was the fellow I had contacted in Seattle, and that he had just come to town and he was interested in buying the narcotics; that he thought he could make a few dollars on it, himself,

(Testimony of Harvey Naylor.)

by reselling it. We agreed on the price, which I said was \$6 before, but he wanted to count it.

Q. Who wanted to count what?

A. Mr. Goode wanted to see the narcotics, to count it. He had to step out in the hallway.

Q. Who did?

A. Mr. Barnett. He had Mr. Goode and I step out in the—his office is at the end of the hall. There is also a back stairway there. That is where he had us wait for him, for about five minutes, I believe, and he returned with this box of narcotics.

Q. Did he say why he wanted you to wait in the stairway?

A. He said until he went and got this box of narcotics. In about five minutes he returned and called us in the office. When the three of us went in the office, why, sure enough! here was this box of narcotics, that I had seen awhile ago on the counter.

Q. Then what happened?

A. After we opened the box and Mr. Goode seen what was in it, that was all; he put him under arrest.

Q. Then what happened—then what did you do?

A. Well, Mr. Goode sent me downstairs to get the other boys to come up. They were down in front. I went down and had them come upstairs.

Q. And then what happened, so far as you were concerned?

A. Well, I stayed around there for awhile and then I went home.

(Testimony of Harvey Naylor.)

Q. Did you get some more of these drugs there?

A. Well, yes, I did. I took some—took them away from him.

Q. When did you do that?

A. Just before I went downstairs to pick up the other three fellows.

Q. How did you do that?

A. Well, I poured them out on the desk—when nobody was looking, I thought—and put some in my pocket. Somebody seen me, I guess.

Q. Then what happened later?

A. When I got downstairs, Graben and this Henry, again, took them away from me.

Q. Did you put them in anything after you got downstairs?

A. Yes. I put them in a little tin can that I had that was all fitted out.

Mr. Sager: Will you give the witness the exhibit?

(Cigar Box, Exhibit 1, handed to the witness.) [70]

Q. (By Mr. Sager): Will you examine the contents of that Exhibit 1 for identification and state what that metal box is there, now?

A. Yes.

(Witness removes metal container from Exhibit 1.)

Q. After they got that back from you, did you leave then? A. Yes. I took a bus home.

(Cigar box, Plaintiff's Exhibit 1, replaced on Clerk's desk.)

(Testimony of Harvey Naylor.)

The Witness: That is a dirty trick!

Q. (By Mr. Sager): Mr. Naylor, have you ever been convicted of a crime? A. Yes, I have.

Q. Where and what?

A. In 1923 for larceny.

Q. Where was that? A. California.

Q. Have you ever been in jail for any other offenses? A. Yes—petty offenses.

Q. What do you mean by petty offenses?

A. Well, I have been picked up for using narcotics, mostly. [71]

Q. How many times?

A. Oh, my! I don't know. Every once in awhile they take me down and let me get myself well—what they call it.

Mr. Sager: You may inquire.

Cross Examination

By Mr. Dailey:

Q. You had known Mr. Macartney, before, had you not, Mr. Naylor?

A. Previous to my meeting him at the Ritz Hotel?

Q. Yes.

A. No. He was just an acquaintance that I had made a matter of weeks before I met Mr. Barnett, there.

Q. When did you first meet Mr. Macartney?

A. Well, I hadn't know him over a month, I am pretty sure, before I met Mr. Barnett.

Q. Where did you meet him?

A. At the Ritz Hotel.

(Testimony of Harvey Naylor.)

Q. In the Ritz Hotel. Were you staying there?

A. At the time we both were, yes.

Q. What?

A. At the time we were both living there.

Q. Did you associate together some prior to the time that Barnett came up? [72]

A. The only time we had any association, he came up to my room and had a drink of whisky and went right out—ten minutes' association.

Q. Had he ever helped you by loaning you money at any time? A. No, sir.

Q. Had he helped you by letting you have money when you were in necessitous circumstances?

A. No, sir.

Q. When Barnett first came and saw you, he told you that Macartney wanted to see you, did he not?

A. He told me he wanted to see me about some narcotics. I guess he told me he wanted to talk to me.

Q. And your first trip up there was expressly to see Macartney, wasn't it? A. To see him?

Q. Yes.

A. That and to see the box of narcotics.

Q. To see the box of narcotics?

A. Yes, sir; to see what there was there.

Q. And then he took you up to the jail and you and Macartney talked there for some time?

A. Yes, sir.

Q. While you and Macartney were talking there, he was talking to the jailer, wasn't he—Barnett?

(Testimony of Harvey Naylor.)

A. At first he was. Then he stepped back and talked to us in our conversation.

Q. Who was it that first suggested to you that you make some arrangement for the sale of this—Macartney or Barnett? A. Mr. Barnett.

Q. Where was that? A. In the Ritz Hotel.

Q. That was before you ever went up there?

A. Yes, sir.

Q. Did he tell you that Macartney said he had some narcotics?

A. He didn't say too much. The whole thing was just a little hazy on our first meeting there as to who had them and where they were—kind of feeling around there, I guess.

Q. You were not under the influence of narcotics at that time, were you?

A. I don't remember whether I had any that day or not. I can't remember that far back. I may have and I may not. I can't say for sure.

Q. When you first talked price, Macartney told you he wanted \$10,000 for it, didn't he?

A. Yes, sir.

Q. That was the first talk you ever had with anybody about price, wasn't it? [74]

A. Well, I couldn't answer that yes or no for sure.

Q. You don't know. And you told him at that time that it was rather high? A. Yes, sir.

Q. And then you told Macartney that you doubted there was any such stuff in existence, didn't you?

(Testimony of Harvey Naylor.)

A. I didn't put it that way. There was a little doubt in my mind as to whether this was true. It sounded a little fabulous to me.

Q. How did it happen that Macartney told Barnett to give you some of it?

A. How did he tell him to give me some?

Q. Yes.

A. I told him I was sick and asked him if I could have some.

Q. You told Macartney you were sick?

A. Yes.

Q. And you asked to have some? A. Yes.

Q. And did he tell Barnett how much to give you?

A. He said to let me have about ten grains.

Q. How much did Barnett give you?

A. He let me count them out myself. I took a few over 10 grains.

Q. How much over? [75]

A. I don't know. I didn't count them.

Q. Twice as much as ten grains?

A. Perhaps.

Q. Three times as much?

A. I couldn't say. I didn't count them. I just took some other than the ten grains.

Q. You just took what you thought you could get away with, is that it? A. Yes, sir.

Q. Then you went up to see him about a week later, you say. Was that on the following Tuesday?

A. It was perhaps either on a Tuesday or a

(Testimony of Harvey Naylor.)

Friday, sir. Those were the two meeting days that he expressed were the best to meet him.

Q. When you went up, you didn't go to see Macartney that day, did you? A. I didn't, no.

Q. You went to see Barnett, didn't you?
A. Yes.

Q. You took along with you a diamond ring, didn't you? A. Yes, sir.

Q. You tried to sell it to Barnett?

A. I tried to sell it or trade it for morphine.

Q. You tried to sell it for \$200 to him, first, didn't you? [76]

A. The money was no object. The morphine is what I wanted.

Q. Did you try to sell it to him at first for \$200?

A. No.

Q. Then did you try to sell it to him for \$50?

A. As near as I know, I tried to trade it for morphine. I wasn't interested in money.

Q. You tried to sell it and then trade it for morphine, didn't you?

A. There would have been no object in that. Had I got the money, I would have turned it into morphine, anyway.

Q. He told you that he didn't have any for sale or that you couldn't buy any or trade it for any, didn't he? A. He didn't put it that way.

Q. How did he put it?

A. He wanted to get the whole \$10,000 or nothing.

(Testimony of Harvey Naylor.)

Q. How much did you want for that ring in striking a bargain?

A. I would have taken any amount of morphine had he given it to me.

Q. Any amount at all? A. Yes.

Q. From one grain up?

A. I wasn't quite that sick to take one grain, but I [77]would have taken anything in reason.

Q. Then when you went up there the last time, you say that was in answer to a telephone call you had made? A. The last time?

Q. Yes. A. I did every time, yes, sir.

Q. What?

A. I made a phone call each time I went up there.

Q. Where did you call from the first time?

A. You are asking me a question that is a hard one to answer there. I believe it was from the restaurant. I couldn't swear to that. I believe it was. I know I made one call from there. Just which call it was, I can't say.

Q. You don't know where he called from the second time?

A. It may have been from the same place.

Q. What?

A. It may have been from the same place.

Q. It may and it may not?

A. That is right.

Q. You don't remember?

A. Not exactly what phone I used, no, sir. I

(Testimony of Harvey Naylor.)

didn't call through the hotel because I don't like to have them listen through the switchboard.

Q. Were you under the influence of narcotics at the time [78] you made the first phone call?

A. I can't remember.

Q. Were you under the influence of narcotics when you made the second call?

A. You are asking hard questions, sir. It is hard to answer if I was or was not.

Q. Well, do you know?

A. If I had had them, I was. At those particular times I was having a hard time getting them. I don't recall if I was or was not.

Q. Were you under the influence of narcotics the day that you called up the Narcotics Agent and reported it to them?

A. I don't remember. I think I was sick?

Q. Why did you report to the Narcotics Agents?

A. I got angry because he wouldn't come down on the price. They were trying to rob me.

Q. "They," meaning Macartney and Barnett, wouldn't come down on the price? A. Yes, sir.

Q. You couldn't have bought any, anyway, could you?

A. I could have got the money to have bought some, not \$10,000 or anywheres near it.

Q. As a matter of fact, you couldn't have raised that much could you? [79]

A. No, sir. That is still a large amount of money for that amount.

Q. That is right. But you couldn't have raised

(Testimony of Harvey Naylor.)

more than a couple of hundred dollars in any event, could you?

A. Possibly a couple of hundred dollars at the best.

Q. And so you got mad because it was there and you couldn't get it and so you reported it to the Narcotics Agents?

A. You can put it that way if you want to.

Q. Well, is that right? I am not putting it this way. I am asking you.

A. I thought it was unfair of him to ask a sick man that kind of money for narcotics, yes.

Q. You thought it was unfair of them and so you were going to report it? A. Yes, sir.

Q. You did report it at first by telephone?

A. Yes, sir; I called Mr. Crisler.

Q. Then which one of the Narcotics Agents came out and talked to you?

A. That Henry Giordano. I can't pronounce that name.

Q. Where did you meet?

A. Manning's Restaurant.

Q. Where? [80] Manning's Restaurant.

Q. Is that where you called him from?

A. Yes, sir.

Q. When was that, do you remember?

A. On what day?

Q. Yes.

A. It was about the first week in February.

Q. And then when was it you came down to the Narcotics Bureau's office and called from there?

(Testimony of Harvey Naylor.)

A. That was immediately after that meeting.

Q. Immmediately after it? A. Yes, sir.

Q. You never had gone back to Macartney again and tried to get him to come down in price, had you?

A. He told me Mr. Barnett would take care of all of the transactions.

Q. When was that?

A. The first and only meeting we had.

Q. You never met Macartney at any other time?

A. No, sir.

Q. But Macartney had told you on the first meeting, you said, that he wanted \$10,000, and if you could get \$8,000, you could keep \$2,000, yourself? A. Yes, sir.

Q. Then it wasn't \$10,000 that he was asking [81] but \$8,000, wasn't it, from you?

A. Putting it that way, yes.

Q. Was he to pay you any commission on the sale?

A. Yes. He said he would give me some more of the morphine.

Q. How much of it?

A. He didn't state any amount; not that I recalled, anyway.

Q. You say at first Mr. Barnett was reluctant to have anything to do with it?

A. He wasn't exactly reluctant. I tried to tell him that he was flirting with dynamite. He admitted he was but that is as far as it went.

Q. He didn't say anything more about it than

(Testimony of Harvey Naylor.)

that? A. Not too much, no, sir.

Q. And on this night that you went up there, you say that you and Goode went up to the office?

A. Yes, sir.

Q. What time was it that you and Goode went up to the office? A. 5:00 o'clock.

Q. At 5:00 o'clock on a Saturday afternoon?

A. About 5:00 o'clock, somewhere around there, yes, sir.

Q. And all you said to him was that Goode was the man that you had brought along and you wanted to look at [82] that stuff? A. Yes, sir.

Q. And Goode said he wanted to count it?

A. He said what, sir?

Q. That he wanted to count it?

A. Yes, sir.

Q. So Barnett got it and you and Goode started to count it?

A. Well, that was all there was to it. When he opened it up, Mr. Goode arrested him.

Q. What?

A. As soon as he opened the package up, Mr. Goode arrested him.

Q. As soon as he opened up the cigar box?

A. Approximately.

Q. You and Mr. Goode didn't count any out on the table?

A. I poured some out of a little bottle on the table and that was it.

Q. Why did you pour some out on the table?

A. I was still figuring on getting some.

(Testimony of Harvey Naylor.)

Q. You were going to grab some of it and put it in your pocket?

A. That's what I thought, yes.

Q. Which you did do, as a matter of fact.

A. Yes. [83]

Q. Then he and Mr. Barnett had some discussion about that, didn't they? A. I guess so.

Q. Mr. Barnett told him that you got some of it, didn't he?

A. I don't know.

Q. Didn't you hear Barnett tell him that you had put some of it in your pocket and hear Goode tell him that he was a liar? A. No.

Q. You didn't hear anything like that?

A. No, because I had gone downstairs.

Q. Had you had any opiates that day, any narcotics?

A. Gee, I don't remember. I didn't have much. I don't think.

Q. Where did you get it?

A. From a doctor.

Q. Did the federal agents give you any?

A. No.

Q. Never at any time? A. No.

Q. Never promised you any? A. No.

Q. This doctor who gave it to you—who took you there? A. To the doctor? [84]

Q. Yes. A. I went myself, sir.

Q. Who sent you there? A. No one.

(Testimony of Harvey Naylor.)

Q. Were any arrangements made by anyone else for you to go there and get any narcotics?

A. I don't know what you mean. No, sir, I just went to the doctor's office.

Q. You don't mean that you can go to a doctor and get narcotics whenever you like, do you?

A. No. It is not that easy.

Q. Who made arrangements for you to get it that day?

A. There was no arrangements made.

Q. But you did go to a doctor and get some?

A. Yes.

Q. You had no trouble about it?

A. Yes, you have trouble. You sometimes have to go to a dozen. If you keep going long enough, you will find one here and there who will give you some.

Q. So you actually were under the influence of narcotics when you went to Everett that time?

A. I could have been.

Q. You could have been each time you went?

A. I could have been, yes. As I say, I was getting some sometimes and sometimes I was not. [85]

Q. You were convicted, you say, in 1923 of larceny in California?

A. Yes, sir.

Q. How long did you serve?

A. Two years.

Q. When did you come to Washington?

A. I first came here in 1905.

Q. But I am talking about '23.

A. 1933.

(Testimony of Harvey Naylor.)

Q. 1933? A. Yes.

Q. Have you been here in Seattle ever since?

A. I have been out, but most of the time I have been here.

Q. Do you work? A. Yes, sir.

Q. What do you do?

A. Bell boy captain.

Q. Bell boy, where?

A. I have been at the Oxford Hotel for the last three years until recently.

Q. Where are you working now?

A. Rest Home; my wife and I both work up there.

Q. Have you ever been convicted of peddling narcotics?

A. I have never sold a grain of narcotics in my life, [86] no sir.

Q. But you have bought it? A. Oh, yes.

Q. These other offenses that you have been jailed for were such as using narcotics—that would be vagrancy?

A. Disorderly person they call it here.

Q. What?

A. Disorderly conduct or disorderly person they call it here, I believe.

Q. You never have been charged with any other crime?

A. That is the only time I have ever been in the penitentiary.

Mr. Dailey: I think that is all.

(Testimony of Harvey Naylor.)

Mr. Sager: That is all, Mr. Naylor.

The Court: You may be excused.

(Witness excused.) [87]

JOSEPH E. GOODE

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Sager:

Q. State your name, please.

A. Joseph E. Goode.

Q. How do you spell your last name?

A. G-o-o-d-e.

Q. What is your present occupation, Mr. Goode?

A. Federal Narcotics Agent.

Q. You are stationed where?

A. Here in Seattle.

Q. Were you in that occupation in February of this year?

A. I was.

Q. Do you know Harvey Naylor—

A. I do.

Q. —the witness who was just on the stand?

A. I do.

Q. Did you have occasion to see him in the Narcotics Office on February 7th of this year?

A. I did. [88]

Q. Just tell us what occurred at that time, Mr. Goode.

(Testimony of Joseph E. Goode.)

A. I was in the Narcotics Office around 1:30 or 2:00 o'clock, when Mr. Naylor came to the office. He made a telephone call—this Agent Giordano did—and got, well, I don't know what. In the conversation—I had heard his side of the conversation, what he was saying on the phone.

Q. What happened after the conversation?

A. After the conversation, Mr. Crisler, the District Supervisor, myself, Agent-Inspector Graben and Inspector Giordano and Harvey—Mr. Naylor and I—drove to Everett, Washington.

Q. What did you do after you drove to Everett, Washington?

A. We got to Everett, Washington, about a quarter to 5:00. Mr. Naylor and I got out of the automobile and we killed a little time until around 5:00 o'clock, when we went into the Central Building, and Room 313, the office of Mr. Barnett.

Q. Had you ever seen Mr. Barnett prior to that time?

A. I never had, no, sir.

Q. Did you go into his office?

A. I did.

Q. Was Mr. Naylor with you at that time?

A. He was.

Q. What occurred after he got in the office?

A. After I got in the office, Mr. Naylor introduced me to Mr. Barnett as "Joe" the man that had the money to buy the narcotics.

Q. Was anybody else present there at that time?

A. There was not.

Q. Go ahead, what else happened?

(Testimony of Joseph E. Goode.)

A. After conversation, I had two one-dollar bills, two fifty-dollar bills and two one hundred-dollar bills folded up in my pocket.

Q. Pardon me, Mr. Goode. Did you say anything to Mr. Barnett as to who you were or where you were from?

A. I told him I was a gambler out of Portland, during the conversation, yes, sir.

Q. Did he say anything in response to that?

A. No, sir. I don't remember that he said anything to that.

Q. Tell us as you recall generally just what the conversation was there between the three of you?

A. After I had the money, the conversation was he wanted to go down to the automobile where he said he had the narcotics. I told him, no, I didn't want to do that—there would be no light there. I would rather he would come up to the office so we would have a light and we could look at the narcotics when he had [90] them out, that he had.

Q. All right; go ahead.

A. Well, he said he would go get it. His office was right close to the rear where there were some rear steps there and a door. He put us up on the second landing, the landing between the two floors. He says, "You stay here until I come back. If anybody comes down the steps, you start walking like you are not waiting for anyone." He was gone about five minutes, I would say, or maybe a little longer. He came back and opened the door and

(Testimony of Joseph E. Goode.)

says, "Come on." He went into the main office. There was a little office on the right and another little office on the left.

At this time he took us into the office on the left.

Then he went into the office on the right and brought out a cigar box wrapped in yellow paper with white string. Then he took the string off, opened up the box and I looked at the bottles of narcotics in there. I opened up one of the bottles and he got some Kleenex for me to pour it out on. I poured some of the tablets out, and—I don't know—there were quite a few of them. I said, "It looks like they are all here. I will take it." Then I acted [91] like I was going to bring out the money, but I brought out my badge, and told him he was under arrest.

Q. Did you discuss with him the price you were to pay at any time while you were there?

A. Yes, sir. The price was six dollars a grain.

Q. Just what conversation did you have with him?

A. The conversation was—when I got up there, I was the man with the money. I told him I would not pay over six dollars a grain for the narcotics. And he said he would take that. He said he had about one thousand—at least one thousand grains, and it would be six thousand dollars.

Q. Was there any further conversation, then, as to whether you would buy them or whether he would sell them?

(Testimony of Joseph E. Goode.)

Mr. Dailey: I object to the question, your Honor, as leading.

The Court: The objection is sustained.

Q. (By Mr. Sager): Was there anything else said about the price or the quantity or anything else, Mr. Goode?

A. Well, Mr. Barnett said he would sell them for six thousand dollars. And that was the price agreed on before he went out. Of course, I wanted to see the narcotics which he brought into the room and produced [92] them for me to see them.

Q. Did you tell him you wanted to see them?

A. Yes.

Q. Did you tell him why?

A. Yes. I wanted to be sure it was narcotics before I paid my money.

Q. After he came back, what conversation did you have with him then—after he came back and wherever he went and produced the box of narcotics?

A. I don't recall any conversation after he came back except that he said, "Here is the box of narcotics." And he set them on the table.

Q. Then what did you do?

A. I looked at the bottles in this cigar box, and I had taken one of the morphine quarter grains. He got a piece of Kleenex, and I poured them on the desk and I says, "Well, it looks like all of the tablets are here. I will take it."

Then I showed him my badge and told him I was

(Testimony of Joseph E. Goode.)

a Federal Narcotics Agent and he was under arrest.

Q. Did you examine any of the other bottles?

A. I looked through them—at how many bottles. I didn't count the bottles, but there was quite a few there and it looked like there was at least that many grains in the whole box.

Q. Would you show the witness the exhibit marked Plaintiff's Exhibit 1 for identification?

(Cigar box, Plaintiff's Exhibit 1, handed to the witness.)

Showing you, now, Plaintiff's Exhibit 1 for identification, Mr. Goode, do you recognize that?

A. I do.

Q. What is it?

A. This is the box, outside of this one. All of these bottles are the ones he delivered to me in his office.

Q. What did you do with that Exhibit following that?

A. This was all initialed. The box was initialed. There was a paper around this box that he brought up, and a string. It was initialed, too. It has my initials on the box and every bottle in here.

Q. What did you personally do—did you take the box away when you finally left there?

A. No, no. Inspector Graben took the box away.

Q. After you placed Mr. Barnett under arrest, what was said then?

A. I placed him under arrest and I said, "Mr.

(Testimony of Joseph E. Goode.)

Barnett, sit down in the chair, here.” He sat down. I said, “What in the world are you doing in this racket?” and he, as he expressed it, said, “I am [94] just a damned fool, that is all.”

A few minutes after that District Supervisor Crisler, Agent Giordano and Inspector Graben came up.

Q. How did they happen to come up?

A. I don’t know how they happened to come up. I opened the door and let them in the office.

Q. Where was Mr. Naylor in the meantime?

A. I told Mr. Naylor to go out and tell the other agent to come up.

Q. After they came up there, was there any other conversation?

A. I introduced Mr. Crisler to Mr. Barnett. I said, “This is Mr. Crisler. He is our boss, in charge of this district.” Then Mr. Crisler talked to him.

Q. Did you hear that conversation?

A. I did.

Q. Will you tell us what was said?

A. Mr. Crisler says, “Mr. Barnett, just what is this all about?” He says, “Well, I will tell you, I was trying to do a fellow a favor and this is what happens; here I am, caught, lose my law practice.” He says, “Tell us the whole thing—how it come around?” He says, “This Harvey Naylor, you went down to Seattle to see him?” He says, “Yes, I was [95] down two times to see Mr. Naylor.” He

(Testimony of Joseph E. Goode.)

went on and told us that Macartney had told him about this box of narcotics.

Q. Did he say who Macartney was?

A. He said he was a fellow who was in the County Jail down there on grand larceny and he had been representing him—was representing him.

And in the conversation he explained that he had got this box from Douglas; that he had went out to Douglas' home on some highway—I forget just how he explained it—and got this box, and he had had it in his possession since about the 17th.

Q. What day was this?

A. On February 7th.

Q. That is when you arrested Mr. Barnett?

A. Yes, sir.

Q. Go right ahead and tell us what you recall of that conversation?

A. He had had it in his possession since about the 17th, and he had—well, I don't remember the whole conversation. But anyway then he wanted permission to call his wife. There was a telephone there, and Mr. Crisler says, "Well, go ahead and call your wife if you want to." He called his wife, and his conversation, what he says on the phone—he says, "I [96] have been arrested." Then he says, "Well, it was that box I have had in the car all along." He says, "I don't know when I will be home but I will be home as soon as I can." Then he wanted to make bail, and he says—we told him he could call the Commissioner up, there, and if

(Testimony of Joseph E. Goode.)

he could get him up there, we would take him down and let him make his bail that night. He called the Commissioner and we walked from his office down to the Commissioner's office.

Q. Before you get to that, do you recall whether or not he said anything to you about Naylor or seeing Naylor?

A. Yes, sir. He said he made two trips down to Seattle to see Naylor.

Q. Did he say anything about Naylor and he and Macartney talking this matter over together.

Mr. Dailey: If your Honor please, I believe that that is leading. I object to it for that reason.

Mr. Sager: It probably is, your Honor.

The Court: The objection is sustained. Try to get at it by a less leading question.

Q. (By Mr. Sager): Do you recall any additional of his statement to you and the other agents there that [97] evening, Mr. Goode?

A. No, I don't. Mr. Crisler was doing the questioning and he was talking to Mr. Crisler more than he was me. Some of it I heard and some of it maybe I didn't hear.

Q. Are you familiar, Mr. Goode, with the order form that is required in the purchase of tax paid narcotics?

A. Yes, sir.

Q. Did you have such a form to submit to Mr. Barnett in connection with this purchase?

A. I did not.

Mr. Sager: I think you may inquire.

(Testimony of Joseph E. Goode.)

Cross-Examination

By By Dailey:

Q. How long have you been a Federal Narcotics Agent, Mr. Goode?

A. Twenty-four years.

Q. How long have you known Naylor?

A. I have known Naylor for practically three months—no, I take it back; about a month, sir.

Q. Had he ever done any of this kind of work for your office before? A. He had.

Q. In the evening when you went up there, you said Naylor [98] merely introduced you as “Joe” and he said, “This is the man who has the money?”

A. Yes, sir—“This is the man I was talking to you about that has the money.”

Q. “This is the man I was talking to you about that has the money?” A. Yes, sir.

Q. Then you went in. And what was it that you said?

A. I told Mr. Barnett, yes, I had the money—I was interested in it but not at \$10 a grain.

Q. What did you say?

A. I told him I would take it at \$6 a grain.

Q. Then what did he say?

A. He said, “That is satisfactory,” that he would take that.

Q. He said that would be satisfactory?

A. Yes.

Q. Hadn't Naylor told you already over the telephone that he had talked about \$6 a grain?

(Testimony of Joseph E. Goode.)

A. Naylor told me that he had talked to him, yes, sir.

Q. Then there wasn't any reason very much to discuss the \$10.

A. Mr. Naylor brought up the \$10 a grain. I told him I wouldn't be interested in it except at \$6 a grain.

Q. All right. He went down and got it and brought it [99] into the office?

A. He went down and got it, yes.

Q. You didn't agree upon the total amount, the total number of grains, or anything of that kind?

A. Only in this way: He said he had one thousand grains. I said, "If you have got one thousand, I have got \$6,000 and will pay you \$6,000 for it."

Q. When was that?

A. That was before he went out.

Q. Before he went downstairs to get it?

A. Yes.

Q. Then, when he went out and brought it back up, you started to count it?

A. I looked at the bottles in here and poured the tablets out of one of them. I can show you the one I started to pour it out of.

Q. Mr. Naylor started to pour some out, too, didn't he?

A. I didn't see, after I left; Mr. Barnett said he saw Naylor pour some out in his hand. Mr. Crisler said, "Go down and get Naylor and, if he has any tablets, take them away from him."

(Testimony of Joseph E. Goode.)

Q. When Barnett first told you that Naylon had taken some tablets, you called him a liar, didn't you?

A. No, sir.

Q. You didn't say anything like that to him?

A. No, sir.

Q. But you didn't hand him any money?

A. No, sir.

Q. You didn't pay him a cent?

A. No, sir.

Mr. Dailey: That is all.

Mr. Sager: That is all, Mr. Goode.

The Court: Step down.

(Witness excused)

ALLYN B. CRISLER

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Sager:

Q. State your name.

A. Allyn B. Crisler.

Q. What is your occupation, Mr. Crisler? [101]

A. District Supervisor of the Bureau of Narcotics, Seattle.

Q. Where is your office?

A. Room 311 in this building.

Q. Did you hold that position on February 7th of this year?

A. I did.

(Testimony of Allyn B. Crisler.)

Q. Did you know Harvey Naylor?

A. Yes, sir.

Q. Did you see him on that day?

A. Yes, sir.

Q. Did you have a call from him?

A. I did.

Q. What did you do after you had this call from him?

A. I told him I would have Agent Giordano come and meet him at Mack's Restaurant, where he said he was.

Q. Did you direct Giordano to go there?

A. I did.

Q. What followed after that?

A. This was on Saturday, and I had just been to the office for a little while, and I had an appointment that I kept and then I went home for lunch, intending to come back to the office. While I was home, I received a call from Mr. Giordano, stating that he would like to have me—— [102]

Mr. Dailey: If your Honor please——

Mr. Sager: Don't state what he said.

A. (Continuing): I had a call from Mr. Giordano and I immediately returned to the office.

The Court: What date was that Saturday you just mentioned now?

The Witness: February 7th.

Q. (By Mr. Sager): Of this present year?

A. 1948, yes, sir.

Q. When you got to the office, who was there?

(Testimony of Allyn B. Crisler.)

A. Agent Giordano and Agent Goode and Harvey Naylor.

Q. Did you have a conversation with Mr. Naylor? A. I did.

Q. What did you do following that conversation?

A. I arranged for a telephone call for Garfield Barnett at Everett, Washington, and was advised by the operator that they were unable to reach him at the office or at his home—that neither phone answered. I told her to keep trying to get him. And after she called and said they had located Mr. Barnett, for him to telephone over to Mr. Naylor to talk with him.

Q. Did you hear Mr. Naylor's conversation?

A. I did. [103]

Q. What did you do following that telephone conversation?

A. I furnished Agent Goode with the sum of \$500 in various denominations of bills, currency, and accompanied Agents Goode, Giordano, Inspector Graben, and Harvey Naylor to Everett.

Q. When you got there, what did you do?

A. Waited in a restaurant across the street from the Central Building until I saw Harvey Naylor leave the building, and then with Agent Giordano and Inspector Graben we met him on the other side of the street in front of the building, entered the building and went up on the third floor to Mr.

(Testimony of Allyn B. Crisler.)

Barnett's office, rapped at the door and was admitted by Agent Goode.

Q. When you got in the office, who was there?

A. Mr. Barnett and Agent Goode were there. Mr. Barnett was seated in a chair and Agent Goode was standing by a table where a cigar box containing various bottles of narcotics was placed.

Q. You say "Mr. Barnett." Do you refer to Garfield C. Barnett? A. Yes, sir.

Q. The defendant here? A. Yes, sir.

Q. Had you ever seen him before?

A. No, sir. Agent Goode introduced me to Mr. Barnett and [104] I sat down beside him and said, "Mr. Barnett, what is this all about?" He said, "I was just trying to do a fellow a favor; here goes my law practice and everything I have."

I then questioned him as to how he got involved in the narcotic transaction. He stated that he was representing a Mr. Macartney who was at that time confined in the Snohomish County Jail on a larceny charge and Mr. Macartney had told him he would be able to obtain a large quantity of narcotics which he would like to have disposed of; that Mr. Macartney suggested that he come to Seattle and look up Harvey Naylor at the Ritz Hotel, whom he knew to be a narcotic addict and either handle the narcotics or make arrangements for the disposition.

I asked him if he had come to Seattle and he said he had; that he had been down here on two

(Testimony of Allyn B. Crisler.)

different occasions and that he met Harvey Naylor; subsequently, that Mr. Naylor had come to Everett and the two of them had gone to the County Jail where they talked the matter over with Mr. Macartney and they arrived at a price of \$10,000 for approximately one thousand grains which they thought they had.

I questioned him further how he got the narcotics, and he said he obtained them from a man named Douglas. I was very much interested in Douglas because his name had never come up before in the conversation.

Mr. Dailey: I object to the comment, your Honor. That is not in response to the question.

Q. (By Mr. Sager): Don't state what your interest is. Just state the conversation.

A. I asked him who Douglas was and he said he was a man that had got in touch with him, to turn the narcotics over to him—that he had driven out in the country with his wife to obtain the narcotics.

I questioned him as to the date when he had obtained them, and after consulting his calendar he arrived at the date of January 17th. He said it was on a Saturday night—he and his wife had driven out to the vicinity of Snohomish.

I questioned him further as to how we could reach this Douglas' home. He stated he took the road out from Snohomish to Monroe, and how they had turned under a railroad track, and that he

(Testimony of Allyn B. Crisler.)

lived at a farm. He said that Mr. Douglas had turned over this cigar box containing the narcotics which was at that time on his desk, and that he had them in his car ever since. I asked him if he had given Harvey [106] Nylon any samples and he said he had. I questioned him further as to why he, as an attorney, would become involved in a deal like this, and he said he had just been a damned fool.

Q. There is before you what is marked as Plaintiff's Exhibit for Identification Number 1.

Would you examine that and tell us what it is?

A. This is the box that contained the narcotics that was on the desk in Mr. Barnett's room. I asked him if he had agreed to sell them to Mr. Goode at \$6 a grain. He was a little bit reluctant to say anything about it.

I said, "Didn't Harvey Nylon call you on the phone today?" He said, "Yes." So I said, "I know all about it because his phone call was made from our office." He said, "Yes," he had agreed to sell them to Mr. Goode for \$6,000.

At that time Agent Giordano picked up one of the bottles, and he said, "We were comparing the narcotics contained in this box with an inventory and an affidavit of a loss of narcotics reported to me by the Bayside Pharmacy in Everett."

Agent Giordano held up one of the bottles and said, "Why, this bottle doesn't contain as many narcotics as were reported here." Mr. Barnett

(Testimony of Allyn B. Crisler.)

said, [107] "Well, Harvey Naylor just got some when he was in here." I said, "How did he get any of them?" And he said, "I saw him pour some in his pocket." I told Graben and Agent Giordano to go in the next room and see if Harvey did have them. They went in there and Harvey had gone out the door. They came back with a little tin box of tablets and said they had found them on Mr. Naylor.

About that time I told Mr. Barnett that he was under arrest. It was Saturday night and, unless he could make some arrangements to get the Commissioner to come down to hold an arraignment, it would be necessary to confine him in jail where he would probably have to stay over Sunday, but we would be happy to accommodate him, if he could get the Commissioner down to have an arraignment that night. He said he would call the Commissioner. He put in a telephone call and told a man that he was in some difficulty and would like to have an arraignment. He also asked if he could call his wife.

We told him he could.

He made another telephone call and in his part of the conversation I heard him say, "It was over that box I had hid in the car." About that time Agent Giordano and Inspector Graben returned to the office [108] with these tablets they had recovered from Mr. Naylor. I told them that Mr. Barnett had told me the story substantially as to what Mr. Naylor had told us previously. During the

(Testimony of Allyn B. Crisler.)

time there, while we remained there some time, we all questioned him at different times. We then took him over to the United States Commissioner's office for an arraignment. When I informed the Commissioner of the nature of the charge, he said he couldn't believe it.

And after some discussion he wanted to know all about the case, what happened. I explained it to him. He said he still couldn't believe it, and he said to Mr. Barnett, "Bart, are these men justified in arresting you?" And Mr. Barnett said, "Yes, they are."

At that time the Commissioner set his bail at \$1500.

Q. What was done with the drugs?

A. Mr. Graben had the drugs. We had some discussion there about it after having compared them with the inventory of loss submitted by the Bayside Pharmacy. I suggested that Mr. Graben go down to the Bayside Pharmacy and see if the owner could identify them as stolen drugs. [109]

Q. Were the drugs brought back to Seattle that night?

A. They were.

Q. Who brought them back?

A. Mr. Graben.

Mr. Sager: You may inquire.

Cross-Examination

By Mr. Dailey:

Q. How long have you been a Narcotics Agent, Mr. Crisler?

(Testimony of Allyn B. Crisler.)

A. I have been employed at the Bureau of Narcotics since July 1, 1929.

Q. Here in Seattle? A. No, sir.

Q. How long have you been in Seattle?

A. A year.

Q. How long have you known Naylor?

A. Oh, since some time late last fall.

Q. He has attended to this kind of work for you before, hasn't he? A. Yes, sir.

Q. He has done this kind of work for you before, hasn't he? A. Yes, sir.

Q. When you went up to Everett with him, you, of course, don't know anything about what took place in the office [110] after Mr. Naylor was there. But you say after you came up Mr. Goode and Mr. Barnett were the only two in the office, is that right? A. That is right; yes, sir.

Q. You at that time asked him what was going on and what it was all about and he said he was trying to do a fellow a favor, is that right?

A. Yes, sir.

Q. He told you, didn't he, that Douglas had given these narcotics to him for Macartney?

A. He said that he had been told by Mr. Macartney that this box of narcotics would be delivered to him by a Mr. Douglas.

Q. Are you sure he said that or did he tell Macartney afterwards that it had been delivered by Douglas?

A. Well, it was my understanding—from his

(Testimony of Allyn B. Crisler.)

conversation, it was my understanding that he had never talked with Douglas at all until the delivery of the narcotics was made.

Q. That is right. But I don't follow you there. Didn't he tell you that Douglas had told Macartney at the jail that he would deliver it to Barnett for Macartney?

A. I couldn't say exactly what he said about that.

Q. You couldn't say exactly what he said about that? A. No. [111]

Q. That might have been what he said?

A. It could be.

Q. He said that he got it about what date?

A. I inquired as to how long he had these narcotics; and after consulting the calendar he arrived at the date of January 17th, 1948, because he said he knew it was on a Saturday night and he thought that that was the date.

Q. When he told you that he had been down to Seattle to see Naylon, did he tell you that he came down to see him after he got these narcotics or before?

A. I don't recall that he said at any time whether he had been down before or after he got the narcotics.

Q. Did you ask him why he came down to see Naylon? A. Yes, sir.

Q. What did he tell you?

A. To see how Naylon could dispose of them.

(Testimony of Allyn B. Crisler.)

Q. To see how Naylon could dispose of these narcotics, is that right? A. Yes, sir.

Q. He didn't tell you that he came down at the request of Macartney because Macartney wanted to see Naylon?

A. Yes. He told me he came down to see Naylon, to see whether he could handle the narcotics or arrange for a sale of them—that Naylon had been referred to [112] him by Mr. Macartney.

Q. And he told you that all of these narcotics belonged to Macartney, didn't he?

A. He never did say who they belonged to.

Q. Didn't you ask him who he was trying to do a favor for?

A. He said he was trying to do a fellow a favor.

Q. Didn't you ask him who?

A. Yes. We asked him what he meant about it. Then he went on and related the story I have just stated, telling how he got into the transaction with Macartney, telling him that he could have them available and would like to sell them.

Q. Is that all that was said about it, that you can remember?

A. Oh, there might have been more conversation. I can't remember all of our conversation.

Q. When he said that he had given Naylon something, did he say that he had given him some at Macartney's request?

A. No. I asked him if he hadn't given Naylon samples, and he said, yes, he had.

(Testimony of Allyn B. Crisler.)

Q. Did you ask him why?

A. No, I don't think I did.

Q. Didn't you think someone else was mixed up in the deal [113] as well as him, or did you?

A. I knew it after he brought Douglas' name into the picture, because I had never heard of him before. During my conversation with Naylor, he had never mentioned Douglas at all.

Q. Naylor didn't know anything about Douglas?

A. I don't know. I assumed, from my conversation with Naylor that Mr. Barnett was getting narcotics from Macartney.

Q. I see. You understood from Naylor, then, originally, that Macartney had something to do with it? A. Oh, yes.

Q. But you didn't know how much he had to do with it?

A. No, because Mr. Naylor told me he had taken him to the jail to talk with Macartney.

Q. Did you have a conversation as to the narcotics? A. He said they wanted \$10,000.

Q. What do you mean when you say "they?"

A. Mr. Macartney and Mr. Barnett had agreed upon the price, that they wanted \$10,000 for the narcotics, the day Mr. Naylor talked to them at the County Jail.

Q. That is right; that Mr. Macartney had fixed the price at that time?

A. He said they had fixed the price at \$10,000.

Q. He just said "they." [114] A. Yes.

(Testimony of Allyn B. Crisler.)

Q. After you took him before the Commissioner, there was some talk there about whether or not you were an authorized agent, wasn't there?

A. Yes.

Q. Did you have your credentials with you?

A. It seems as though I didn't have mine. We came in there and I introduced myself to Mr.—I don't recall the Commissioner's name.

Q. Cooper? A. That is right; Mr. Cooper.

I told him who I was, my name, and I said, "We want to get out a complaint against Garfield C. Barnett for narcotics violation." He was very much perturbed about such a statement.

Q. Well, now, I didn't ask you that, Mr. Crisler. I say: Did you have some discussion there about whether or not you had your credentials with you and were an authorized agent for the United States Government?

A. That is what I was trying to lead up to.

Q. All right. You can answer that with one word. You don't need to go into a long dissertation.

A. I can't say positively that I did. It appears that I had nothing but a badge and didn't have my credentials. I asked Agent Giordano to show Mr. Cooper his. [115]

Q. You told him that you were an authorized agent of the government, didn't you?

A. That is right.

Q. And asked him if he was willing to concede it, didn't you?

(Testimony of Allyn B. Crisler.)

A. Mr. Cooper said to me, "Do you know what you are doing?" And I said, "I think we do know what we are doing."

Q. Now, Mr. Crisler. I didn't ask you that.

A. I am just trying to give what the conversation was.

Q. Mr. Cooper asked Mr. Barnett if he was willing to concede that you folks were properly authorized agents when you didn't have your credentials, didn't he?

A. I don't recall him asking that question.

Q. You don't recall. But isn't that when Mr. Barnett told him that he was perfectly willing to do that?

A. Mr. Cooper asked him if we were.

Q. You can answer my question very easily, yes or no, if you remember it.

A. I don't remember it that way.

Q. All right. That is all I am asking you. You don't remember that conversation or anything like it taking place between Mr. Cooper and Mr. Barnett?

A. Well, I remember a similar coversation, but not in those words.

Q. Well, did it have to do with your lack of credentials? [116]

A. No, not that I recall, any lack of credentials.
Mr. Dailey: That is all.

Redirect Examination

By Mr. Sager:

Q. What was that conversation, Mr. Crisler?

(Testimony of Allyn B. Crisler.)

A. Mr. Cooper asked Mr. Barnett. He said, "Are these men justified in—"

Mr. Dailey: If Your Honor please, that has already been gone into. This is purely repetition.

The Court: Objection overruled.

Mr. Dailey: Exception.

The Court: Allowed.

A. (Continuing) Mr. Cooper asked Mr. Barnett if these gentlemen were justified in arresting him on this narcotic charge. He said, "Yes."

Mr. Sager: That is all.

Mr. Dailey: That is all.

(Witness excused.) [117]

HENRY L. GIORDANO,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Sager:

Q. Will you state your name?

A. Henry L. Giordano.

Q. What is your occupation, Mr. Giordano?

A. Narcotic Agent with the Bureau of Narcotics in Seattle, Washington.

Q. Were you in that occupation on February 7th of this year? A. I was.

Q. On that day did you have occasion to see Harvey Naylor? A. I did.

(Testimony of Henry L. Giordano.)

Q. Where did you see him?

A. In Manning's Restaurant on Fourth Avenue, between Pike and Pine.

Q. Did you have a conversation with him there?

A. I did.

Q. Following that conversation what did you do?

A. I returned to the office where I had another conversation with Mr. Naylor. [118]

Q. Did he go up to the office with you?

A. He did.

Q. Was there anybody else present at your office at that time?

A. Agent Goode was present and later on this supervisor Crisler and Inspector Graben were present.

Q. During the course of your conversation there, what was there?

A. After considerable conversation, a telephone call was made in the office to which I listened in on an extension.

Q. To whom was that call made?

A. Mr. Barnett.

Q. That is the defendant here?

A. Yes, sir.

Q. Who was the conversation between?

A. Between Mr. Barnett and Mr. Naylor.

Q. Did you make a record of that conversation?

A. I made notes in regard to the conversation.

Q. Did you write down the conversation?

A. Yes. As both parties were talking, I copied down what they were saying.

(Testimony of Henry L. Giordano.)

Q. Do you have those notes— A. Yes, sir.

Q. —with you now? [119] A. Yes, sir.

Q. Will you tell us what that conversation was? You may refer to those notes to refresh yourself as to the details whenever necessary.

A. The conversation started with Mr. Naylon saying, "hello—Mr. Barnett? Do you know who this is?" And Mr. Barnett said, "Yes, I think I do." Mr. Naylon said, "How is everything up there?" And Mr. Barnett said, "The same as before." Mr. Naylon then said, "I have got ahold of that man and he will take everything that you have got. He will only pay \$6 a grain for all that you have got." Mr. Barnett hesitated for quite awhile. Finally he said, "O.K.—right; I will take it." Then Mr. Barnett said, "When can we see you—today or tomorrow?" And Mr. Barnett said, "Well, any time." Mr. Naylon said, "Well, how about today; what time can we see you today?" or he said, "What time is it now?" and Mr. Barnett said, "2:30." And Mr. Naylon said, "What time can we see you?" Mr. Barnett said, "About 4:00 or 5:00." He said, "You had better make it closer to 5:00 o'clock; my wife is out with the car."

Mr. Naylon said, "We will be there at 5:00: we have to take a bus." He said, "Don't scare the party off like you did last time." He said, "You [120] just come with the stuff and we will take everything."

Q. Following that conversation, did you go to Everett?

(Testimony of Henry L. Giordano.)

A. Yes. I went to Everett in the company of District Supervisor Crisler, Agent Goode, Inspector Graben, and Harvey Naylor.

Q. What did you do after you got to Everett?

A. I waited across the street from the Central Building with District Supervisor Crisler, and Inspector Graben, and after a short period of time Mr. Naylor came to the front door of the building and started across the street, and walked across with District Supervisor Crisler and Inspector Graben and went with Mr. Naylor up to the third floor to Mr. Barnett's office. The door was opened by Agent Goode, and I went in with the other officers, and entered the office to the left where Mr. Barnett was sitting in the chair. Mr. Crisler sat down next to him. Mr. Goode had told District Supervisor Crisler—he said, "The sale has been made." Mr. Crisler asked Mr. Barnett what it was all about. Mr. Barnett said, "I was just trying to do a friend a favor and now I have lost my law practice and everything." Mr. Crisler said to Mr. Barnett, "Well, tell me all about it."

In the meantime, I had been examining the narcotic drugs which were on the table in the room, in at [121] cigar box, and one bottle was opened, and the tablets were laying on a piece of tissue paper. I held one of the bottles up and said, "There isn't enough tablets in here; this doesn't compare with this inventory."

Mr. Barnett said, "Well, Harvey Naylor just got some before." We asked what he meant by that

(Testimony of Henry L. Giordano.)

and he said, "Well, when Mr. Goode was counting the tablets, Mr. Naylon poured some of the tablets into his pocket." District Supervisor Crisler instructed Inspector Graben and myself to go and get the tablets from Mr. Naylon, which we did. Mr. Naylon had been waiting in one of the other offices and we went in there and he had left. So we went downstairs and stopped him in the lobby. Inspector Graben searched him and we found an ointment tin containing a quantity of tablets—morphine tablets.

Q. Mr. Giordano, there is on the stand there before you what is identified as Plaintiff's Exhibit Number 1. Will you examine that and tell us what it is?

A. This is the cigar box that was on the desk in Mr. Barnett's office when I went in, after being admitted by Agent Goode. These bottles were all in the box except one. One bottle was out, standing alongside the box, with some of the tablets poured out in a Kleenex. This here ointment tin with the tablets is [122] the one that was recovered by Inspector Graben in my presence.

Q. From Mr.—

A. From Mr. Naylon. They all have my initials on them, where I initialed them at the time.

Q. What was done with that exhibit following the completion of your work there at Everett that evening?

A. It was taken into custody by Inspector Graben and, after it was sealed, brought back to Seattle—and it was sealed. Inspector Graben and I

(Testimony of Henry L. Giordano.)

inventoried it and sealed it and it was transferred to my custody on about the 10th and was kept in the safe in the Narcotic office, room 311; and on about February 17th, I believe, I took it to the United States Chemist, Mr. Ringstrom in the Federal Office Building in Seattle and placed it in his custody.

Q. Following this, you and Mr. Graben out to recover this little can of drugs from Naylor?

A. Yes.

Q. Did you then come back up to the office?

A. Yes, returned to the office with Inspector Graben. We were admitted to the office that time, I believe, by District Supervisor Crisler. I can't recall whether the door was open or he opened the door for us. As we entered, Mr. Crisler said, "Mr. Barnett has told [123] me the whole story and we are making arrangements to bring him before the Commissioner."

He said to Mr. Barnett. "Tell these men the story of what happened and what transpired in connection with these narcotics."

Mr. Barnett said to Inspector Graben and I, "Well, I have a client, a Mr. Macartney in the County Jail whom I have been representing." He said, "Mr. Macartney instructed a man named Douglas to turn over this box of narcotics to me."

He also stated that he had received instructions from Mr. Macartney that Macartney knew an addict in Seattle who could tell Mr. Barnett how to dis-

(Testimony of Henry L. Giordano.)

pose of it or possibly would take the narcotics, and that he saw this addict.

Q. Did he say who he was?

A. He said his name was Harvey Naylor. He said he lived in the Ritz Hotel in Seattle.

I asked him how many times he saw Harvey Naylor—and he stated that he had been to Seattle twice to see him—saw him on only one occasion and that Mr. Naylor had been to Everett to see him on two occasions exclusive of that particular date. I asked him if on one of those occasions he had given Mr. Naylor some opiates. He said, “Yes,” that on the [124 & 125] second occasion he had given Mr. Naylor some cocaine and that on a previous occasion he had given him some morphine tablets.

I then asked him if he had had a telephone conversation with Mr. Naylor on that day and he said, yes, he had. I said, “Well, I know about it. I overheard the conversation.”

I believe about that time we left the office. I am not sure.

Q. Let me direct your attention. Did he say anything about where he had gotten the drugs?

A. Yes. He said he had gotten them from Douglas. We asked about this Douglas and he said Douglas had been in jail up in Everett along with Macartney on a charge of burglary or robbery and that he had gone to Douglas' home which was out of Snohomish,—this was a farm out there—and obtained the box which had been wrapped in paper, from Douglas. I asked him how he happened to go out to get the nar-

(Testimony of Henry L. Giordano.)

coties and he said he had received a telephone call from Douglas, asking where he lived, and saying that he had a box to deliver according to Macartney's instructions. He said the following day, which was a Saturday, he received another telephone call from Douglas, and on this occasion Douglas told him [126] that he couldn't get in to deliver the box and made some excuse that his car was broken down or had trouble. He stated that he asked Douglas where he lived and received instructions from Douglas as to how to get to the farm, and that he drove out to the farm and parked there, Douglas came out to the car and asked if he was Barnett and then went into the house—after Barnett said, yes, I am—went into the house and returned and handed him this box, and he drove back to Everett with the box.

Q. Did he say whether anybody went with him to Snohomish?

A. He said his wife went out with him. [127]

Seattle, Washington, May 12, 1948

9:30 o'Clock, P.M.

HENRY L. GIORDANO

(Resumed.)

Direct Examination—(Continuing)

By Mr. Sager:

Q. Mr. Giordano, what further conversation did you have with the defendant Barnett up there in his office?

(Testimony of Henry L. Giordano.)

The Court: If you did have any further conversations.

A. I asked Mr. Barnett in his office if he didn't realize [129] that he had been violating the law in handling the narcotics and he said he had. I said, "Well, you are an attorney; you should know better." And he said, "Well," he guessed he was just a damned fool in doing it. I don't recall any additional conversation at the office.

Q. Were you there when an arrangement was made to have a Commissioner's Hearing?

A. Yes. I believe I was, yes.

Q. Do you recall what transpired in that connection?

A. Mr. Crisler had advised Mr. Barnett that he would have to be brought before a Commissioner inasmuch as it was Saturday and already all of the offices were closed,—if he knew the Commissioner and could call him at his home or locate him some place and have him come down so that he could be arraigned and a bond set right away, and then he could go ahead and use the telephone, which Mr. Barnett did.

Q. Do you recall what he said over the telephone?

A. Not other than he said that he was in some trouble and wished that the Commissioner would come to his office for,—I don't recall his exact words.

Q. Did you then go to the Commissioner's office?

A. Yes, I did.

Q. With the rest of you who were there? [130]

A. Yes, sir.

Q. What happened there, Mr. Giordano?

(Testimony of Henry L. Giordano.)

A. When we first got into the Commissioner's office, Mr. Crisler introduced himself as a District Supervisor for the Bureau of Narcotics and told Mr. Cooper that he wanted to file a complaint against Mr. Barnett. Mr. Cooper asked Mr. Crisler if he knew what he was doing. Mr. Crisler said, yes, he thought he did. He then said to Mr. Crisler, "You haven't shown me any credentials." He said, "You claim you are with the Narcotics Bureau, but you haven't shown me your credentials."

Mr. Crisler reached into his pocket to get his credentials and found he didn't have them, and asked me to show my credentials to Mr. Cooper, which I did.

The Commissioner asked Mr. Barnett to step out for awhile and talked to us. Then he asked Mr. Barnett to come back into the office.

At that time he had already prepared the complaint. He asked Mr. Barnett, he asked him, "Are these men justified in arresting you?" and Mr. Barnett answered "Yes, they are."

The Commissioner then proceeded with the arraignment, set the bond, and after the arraignment Agent Goode and I took Mr. Barnett to the County Jail.

Q. Was bond later furnished that evening?

A. I don't know.

Q. Do you know whether or not Mr. Barnett was released from jail that evening?

A. He had not been when I left the jail.

Mr. Sager: You may inquire.

(Testimony of Henry L. Giordano.)

Cross-Examination

By Mr. Dailey:

Q. Who was the Commissioner?

A. Mr. Cooper.

Q. When you went up to the office there, there were four or five of you there, weren't there?

A. Mr. Barnett's office?

Q. Yes? A. Yes, sir.

Q. You were all asking him questions at once, weren't you?

A. Not at the same time, no, sir. Mr. Crisler started asking the questions. I didn't ask questions until just prior to the time we left the office.

Q. And all the question you asked him was how he came to get mixed up in this and he said he had just been a damned fool? [132]

A. No. I asked him other questions; when he was relating what had happened, I asked him questions in regards to that.

Q. Well, he told you where he had got it,—that he got it from Douglas, didn't he? A. Yes, sir.

Q. He told you that he went out to Douglas' house because Douglas had called him and said he had a package for Macartney and that his car was broken down, isn't that right?

A. He didn't say he had a package for Macartney. He said he had a package that he was to deliver according to the agreement with Macartney.

Q. Are you sure that he said that?

A. To the best of my recollection that is what he said.

(Testimony of Henry L. Giordano.)

Q. He told you that he had a client, Macartney, in jail who had told Douglas to turn this over to him, and that Douglas had done it, isn't that what he told you? A. Yes, sir.

Q. He told you, then, that he got a call from Douglas and Douglas had a box to deliver according to Macartney's instructions, is that right?

A. Well, yes; that is substantially correct.

Q. Then you say you asked him if he didn't realize he had violated the law? [133] A. Yes, sir.

Q. How did you tell him he had violated the law,—or did you tell?

A. In handling these narcotic drugs.

Q. Do you mean in having possession of them.

A. In handling and the sale of them.

Q. What did you say to him,—what were your exact words?

A. Well, as close as I can remember, my exact words were "Don't you realize you have violated the law in selling these narcotics to Agent Goode, here?"

Q. That is not what you said yesterday, is it?

A. (No response).

Q. Didn't you say yesterday that you had asked him if he realized that he had violated the law and that is all. A. I said that this morning.

Q. When you were talking with the Commissioner, there, you say Barnett was out of the room part of the time? A. Yes, sir.

Q. Did you hear the Commissioner, Mr. Cooper, asking if you men were justified in arresting him?

A. Yes, sir.

(Testimony of Henry L. Giordano.)

Q. Was that after you had told the Commissioner your story and the complaint was made out?

A. Yes, sir.

Q. Had he yet seen the complaint? [134]

A. Mr. Barnett?

Q. Barnett. A. Yes, he had.

Q. He had seen it? A. Yes.

Q. And then the Commissioner asked you if you were justified in arresting him and you said yes?

A. Yes.

Q. You had already arrested him, hadn't you?

A. Yes, sir.

Q. And of course you think you are justified in arresting a man on suspicion, don't you?

A. It all depends on the circumstances.

Q. I am asking you what you think.

A. Well, we are not authorized to arrest someone just on suspicion alone.

Q. You think you are justified, don't you?

A. We have to have more than just suspicion to arrest.

Mr. Dailey: I think that is all.

Mr. Sager: That is all, Mr. Giordano.

The Court: Step down.

(Witness excused.) [135]

* * * *

It Is Hereby Stipulated between the parties hereto that Hugo Ringstrom testified as follows:

That he was a chemist; a graduate of the School of Chemistry of the University of Minnesota, the class of 1915; that he has been engaged in the pro-

fession of chemistry at all times since with exception of two years. That he examined the contents of each individual bottle contained in Exhibit 1, and found them to contain the following:

- 1 bottle containing 188 $\frac{1}{2}$ gr. morphine sulphate tablets
- 1 bottle containing 293 $\frac{1}{6}$ gr. morphine sulphate tablets
- 1 bottle containing 501 $\frac{1}{4}$ gr. morphine sulphate tablets
- 1 bottle containing 85 $\frac{1}{8}$ gr. morphine sulphate tablets
- 63 $\frac{1}{2}$ gr. morphine sulphate tablets
- 1 bottle containing 177 gr. powdered opium
- 1 bottle containing 51 $\frac{1}{4}$ gr. codeine sulphate tablets
- 1 bottle containing 100 $\frac{1}{4}$ gr. codeine phosphate tablets
- 1 bottle containing 100 $\frac{1}{2}$ gr. codeine sulphate tablets
- 1 bottle containing 502 $\frac{1}{2}$ gr. codeine sulphate tablets
- 1 bottle containing 40 copavin tablets
- 1 bottle containing 100 5-mg. dolophine tablets
- 1 bottle containing 39 copavin capsules
- 1 bottle containing 93 acetidine with codeine phosphate tablets

JEANNE NAYLON

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Sager:

Q. State your name, please.

A. Jeanne Naylon—Mrs. Jeanne Naylon.

Q. Are you the wife of Harvey Naylon?

A. Yes, sir.

Q. Do you know Ralph R. Macartney?

A. Yes, sir.

Q. Where did you become acquainted with him, Mrs. Naylon? A. At the Ritz Hotel.

Q. About when?

A. Well, he lived there perhaps two or three months—around the latter part of November and December.

Q. Of what year? A. 1947.

Q. Have you ever met the defendant Garfield Barnett? A. One time.

Q. When was that?

A. Oh, around the middle part of January. [148]

Q. Where was it? A. At the Ritz Hotel.

Q. Will you tell us what occurred on that occasion, Mrs. Naylon?

A. He called up my room and asked for Harvey, and I told him Harvey wasn't there. He said it was Ralph. So I hung up the phone, and I couldn't imagine—I thought he meant Ralph Ma-

(Testimony of Jeanne Naylor.)

cartney, and I couldn't imagine him being there so I called down to the office and they said it was Mr. Barnett.

Mr. Dailey: I object to that, your Honor.

The Court: The objection is sustained. It is stricken and the jury will disregard it.

Mr. Sager: What they told you from the office is not proper.

The Court: That is what the court meant.

The Witness: All right.

A. (Continuing): Well, I went down to the lobby and talked to Mr. Barnett, then.

Q. (By Mr. Sager): Just what conversation did you have with Mr. Barnett?

A. Well, he said Harvey was supposed to have called him the day before that, and he didn't, and he was in Seattle to attend a dinner and he came by to see [149] Harvey, and he said to tell him to call him. Then he said, "I am not after him with an axe but tell him to get in touch with me right away. I made a bargain with him and I expect him to keep his end of it."

Q. Was anything else said?

A. No. He said to call him around 8:30 because he expected to be home then.

Q. 8:30 when? A. That evening.

Q. Did he say where he was to call him?

A. At his home.

Q. Did he tell you who he was?

A. Yes. He said it was Mr. Barnett.

(Testimony of Jeanne Naylor.)

Q. Was that all? A. Yes, sir.

Mr. Sager: You may inquire.

Cross-Examination

By Mr. Dailey:

Q. What time of day was it that he saw you?

A. Well, it must have been before 4:00 o'clock. The day clerk goes on at 4:00, and she was still there. It was some time in the early afternoon, I believe. It [150] could have been around noon but I don't believe so—it was in the early afternoon.

Q. Did you ask him what the bargain was that he had made with Barnett? A. No.

Q. You didn't ask him any questions about it?

A. No. He said Harvey had made a bargain with him and he expected him to keep it.

Q. He just said he didn't want him to call?

A. Yes.

Q. Then he said he was not after him with an axe but wanted to see him right away?

A. Yes.

Q. That he had made a bargain with him which he expected Mr. Barnett to keep?

A. Yes, sir.

Q. You don't know anything about what that bargain was?

A. No. He didn't discuss that at all.

Q. Are you a user of narcotics?

A. No, sir.

Q. Never have been? A. No.

(Testimony of Jeanne Naylor.)

Q. On this day in question had you been drinking? A. No.

Q. Do you drink? [151]

A. Not very much. I drink beer once in a while.

Q. As a matter of fact, you and your husband met Macartney on parties there at the Ritz, did you not? A. No, sir.

Q. You did know that Macartney and Harvey were pretty good friends, didn't you?

A. No. He just was an acquaintance. We would just see him there at the hotel?

Q. Didn't you party together?

A. Never. We were never on a party together.

Mr. Dailey: That is all.

Mr. Sager: That is all, Mrs. Naylor.

The Court: You may be excused, Mrs. Naylor.

(Witness excused.) [152]

WALTER G. GRABEN

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Sager:

Q. Will you state your name, please?

A. Walter G. Graben.

Q. And your occupation?

A. I am a Narcotic Inspector with the Bureau of Narcotics, stationed in Seattle, Washington.

(Testimony of Walter G. Graben.)

Q. How long have you been with the Bureau of Narcotics, Mr. Graben?

A. Twenty-four years.

Q. Mr. Graben, are you familiar with the price of narcotic drugs on the illicit market?

A. Yes, I am.

Q. I mean the price between peddlers and dope addicts? A. Yes.

Q. What is the price or what is the range of price?

A. Morphine sulphate, a quarter grain tablet sells all of the way from \$3.00 to \$5.00, depending on how available it happens to be at the time. The one-half grain tablets sell for quite a little more—perhaps [153] from \$4 to all the way from \$6, \$7, or \$8, also depending on the availability.

Q. Does that price vary depending upon the quantity sold or purchased?

A. Yes. If there is a shortage, they perhaps would get a little higher than they would otherwise.

Q. I mean in buying large quantities in a particular purchase, would the price be different?

A. Yes. You would buy a larger quantity with a reduction, of course.

Q. Do you know the defendant, Mr. Barnett?

A. Yes, I do.

Q. When did you first meet him?

A. On February 7th, this year.

Q. Where?

(Testimony of Walter G. Graben.)

A. In Everett, Washington, in his office in I believe it is the Central Building.

Q. Will you tell us what previous circumstances led up to your going to Everett on that occasion?

A. I left our office in this building with District Supervisor Crisler and Narcotic Agents Goode and Giordano.

Q. Well, prior to that? A. Prior to that?

Q. Yes. Were you at the office when Mr. Naylor was there? [154]

A. I was there when he was there, yes, but I was not there when any telephone conversation was made.

Q. All right. Then you went up to Everett with the other agents? A. After a call, yes.

Q. After you got to Everett, tell us what you did?

A. We waited across the street from Mr. Barnett's—

Q. Who?

A. Narcotic Agent Giordano and I and District Supervisor Crisler waited in a cafe, I believe it was, across the street from the building in which Mr. Barnett has his office. We saw Harvey Naylor and Narcotic Agent Goode enter the building. In a short time Harvey Naylor came across the street to where we were, at which time District Supervisor Crisler and Agent Giordano and I entered the building and went to the office of Mr. Barnett in the building.

(Testimony of Walter G. Graben.)

When we entered the office, Mr. Barnett and Narcotic Agent Goode were seated in his office and directly in front of them on a desk there was a considerable number of bottles of various narcotic drugs in bottles such as are used in drug stores.

Q. The bailiff is handing you Plaintiff's Exhibit Number 1, Mr. Graben. Will you examine that and state what it is? [155]

A. This is the box—a Van Dyke cigar box—containing the various drugs which were just referred to as being on the table in the room in which Mr. Barnett and Narcotic Agent Goode were seated in Everett on February 7th.

Q. At that time, were any of these tablets out of the bottle?

A. Yes. The bottle containing the morphine sulphate, one-half grain tablets was out on the —separated from the rest of them and there was a Kleenex on the desk and a quantity of tablets lying out on the Kleenex, and the remainder in the bottle.

Q. Then go ahead and tell us from there what happened, Mr. Graben.

A. Mr. Crisler questioned Mr. Barnett in our presence about these drugs, and asked him what had transpired. Mr. Barnett told him, in answer, that he was just trying to help out a friend. I believe he used the word "friend" or someone. He was asked, then, where he obtained these drugs. He stated, then, that he had a client in the Snohomish County Jail—referred to him as Macartney—who

(Testimony of Walter G. Graben.)

had told him that he had a friend who had been in jail with him in the Snohomish County Jail, who had a quantity of drugs and that he had directed that man, whom he called Douglas, to turn [156] the box of narcotics over to him—Mr. Barnett. And he stated that subsequent to that he had received one or possibly two calls from this man referred to as Douglas, and there was some conversation that Douglas wasn't able to bring the box of drugs in and turn them over to him as had been arranged with Macartney, and so——

Q. Wait a minute.

A. Mr. Macartney, he drove out to the place where Douglas was staying, some distance out of there toward Snohomish, at which time Douglas turned over to him this box of drugs, which he had had Barnett—Mr. Barnett had had in his possession at that time.

He set the date upon which he obtained the drugs upon being asked that question as approximately January 17th, because he said, that Douglas was released on bond from the Snohomish County jail on the 16th, and it was shortly after that. He was also told, then, that it was very apparent that these drugs were from a drug store stock. It was also stated at that time that very possibly they were from a local drug store in Everett which had been burglarized previously on the night of December 24th—the Bayview Drug.

Because of the fact that an inventory of the

(Testimony of Walter G. Graben.)

drugs, which we had in our possession, the Bay-view loss filed on an affidavit seemed to show a large number——

Mr. Dailey: I object to this, your Honor, as something which is wholly without the issues of any information that they had unless he testified that somebody imparted that knowledge to the defendant.

The Court: Does that involve the same question that you raised yesterday as to one witness testifying as to conversations had out of the presence of the defendant?

Mr. Dailey: Yes, your Honor.

The Court: If counsel would like the court to do so, to give the cautionary instruction which I usually give in these cases on that point——

Mr. Dailey: I think your Honor should.

Mr. Sager: If the Court please, this doesn't involve any conversation with anybody else outside of the presence of the defendant. He is telling him now what transpired in the defendant's office.

Mr. Dailey: That is not my understanding, your Honor.

The Court: Then establish the fact, if it is a fact, by counsel examining. [158]

The objection is overruled.

Q. (By Mr. Sager): Mr. Graben, I don't want you to state anything that you learned from other sources. Just tell us what happened, what you were

(Testimony of Walter G. Graben.)

doing, and what was said there in the presence of Mr. Barnett in his office.

A. It was suggested that there were fewer morphine sulphate one-half grain tablets in that bottle than should be there, and Mr. Barnett was asked what happened to the rest of the tablets, whereupon he said that Harvey took some of them.

We said, "When was that?" And he said, "Well, when they were on the table there, when Agent Goode was there, Harvey put some of them in his coat pocket."

Mr. Crisler then immediately told Harry Giordano and I to go to Harvey and see if he had the tablets.

We went into the *adjoining where* he had been seated and he was not there. He had just gone through the door, apparently, and we went downstairs and he was just then down in the entrance to the building. I asked him if he had——

Q. You can't relate that conversation? [159]

A. I see. At that time he had on his person an ointment box containing—I think there were approximately sixty-one morphine tablets, one-half grain, which he turned over to me. We then returned to the office of Mr. Barnett.

Q. Is that ointment box in this exhibit?

A. Yes.

The Court: "In this exhibit"—is that included as a part of Plaintiff's Exhibit 1, Mr. Witness, which is already in evidence?

(Testimony of Walter G. Graben.)

The Witness: It is, yes.

A. (Continuing): We returned to Mr. Barnett's office and shortly thereafter—after some arrangements had been made with Mr. Crisler and Mr. Barnett relative to the filing of a complaint and the obtaining of the presence of a United States Commissioner for arraignment—we went to the office of the United States Commissioner in Everett.

Q. (By Mr. Sager): Before you go further there, Mr. Graben, do you recall whether or not anything was said in your conversation with Mr. Barnett with respect to seeing Naylor?

A. Yes. Mr. Barnett stated that he had made several [160] trips to Seattle, that he was asked, "How did you happen to know Naylor?" and he said that he didn't know him, but that Macartney knew him, and Macartney had told him that if he would go to Seattle and look up Naylor in the Ritz Hotel, that he could negotiate for the disposition of these drugs with Naylor.

He made, I believe, two trips to Seattle and he stated he contacted Naylor on one occasion, but on the other occasion he couldn't locate him. He also stated that Naylor had been in his office on two occasions, I believe, at which time the drugs and their disposition was discussed, and that on one occasion he gave Naylor a sample of some cocaine.

Q. Did he say anything concerning the price of the drugs or their value? A. Yes.

('Testimony of Walter G. Graben.)

Mr. Dailey: If the Court please, I think that is leading and I object to it for that reason.

The Court: The objection is sustained. Exhaust the witness' recollection first, please.

Q. (By Mr. Sager): Do you recall anything further that was said by Mr. Barnett during that conversation—about his transactions with either of these men?

A. The matter of price—there was some conversation; [161] I don't recall just what it was. I may have been in the other office just then. But there was some conversation there about the sum of money which the drugs would—the value of the drugs.

Q. Was that conversation with Mr. Barnett?

A. Yes.

Q. Was there any sum named?

A. A sum, yes—the sum of supposedly \$10,000 for the lump sum of drugs was what the negotiations were for, with Narcotic Agent Goode.

Q. Do you recall any other conversation there at that time, Mr. Graben?

A. Just at the moment I don't recall any other conversation. No, I don't recall.

Q. Do you recall whether he stated where he got the box of drugs?

Mr. Dailey: I think that has already been gone into, if your Honor please.

Mr. Sager: If it has, I don't want to repeat it.

The Court: The witness related the conversation

(Testimony of Walter G. Graben.)

with Mr. Barnett which concerned two named persons.

The Witness: Yes.

A. (Continuing): He drove out to Douglas' place— [162] out toward Snohomish. I thought I stated——

Q. (By Mr. Sager): Did you already testify to that?

A. I did—that it contained a box of drugs.

Q. Following this conversation in his office, did you go to the Commissioner's office?

A. Yes, I did.

Q. Tell us what occurred there?

A. The Commissioner discussed the matter of arraignment and this Complaint quite a bit with District Supervisor Crisler and asked him what about the circumstances in connection with it. Then after considerable discussion of the matter—Mr. Barnett was out of the office for a while, while it was being discussed with us, and when Mr. Barnett returned into the Commissioner's office, he was asked by the Commissioner—Mr. Barnett was asked by the Commissioner whether the officers were justified in making this arrest and he said that they were. That is about all that I can recall of the Commissioner's arraignment.

Q. Where did you go from the Commissioner's office?

A. I had this exhibit, containing the drugs, which were in the possession of Mr. Barnett. I

(Testimony of Walter G. Graben.)

took possession of this box of drugs, and I went to the Bayside Drug in Everett. [163]

Mr. Dailey: I object to that, if your Honor, as wholly beyond the issues here—what he did at the Bayside Drug.

The Court: Upon what material issue does this inquiry bear?

Mr. Sager: I want to show the source of the drugs.

Mr. Dailey: That is not the proper way, if your Honor please. I don't think that is material.

Mr. Sager: I am not asking for any conversation; I am merely asking what he did.

The Court: Is this after the arrest?

Mr. Dailey: This is after the arrest, your Honor.

The Court: The objection is sustained.

Q. (By Mr. Sager): Did you keep these drugs, then, in your possession following that, Mr. Graben?
A. Yes.

Q. What did you do to them?

A. Following the arrest, we came to our office in the building and these drugs were placed in the safe in our vault.

Q. Following that, what happened?

A. Following that, on the 10th of the month of February, [164] 1948, they were placed in a government wrapping, with a government evidence envelope attached, and prepared for transmittal to

(Testimony of Walter G. Graben.)

the chemist. And they were later on transmitted to the chemist by Narcotic Agent Giordano.

Mr. Sager: You may inquire.

Cross-Examination

By Mr. Dailey:

Q. You didn't go up to the office at all; each one of you three remained in the cafe there until after Naylon came down, is that right?

A. Yes, that is right.

Q. What cafe were you in?

A. I don't remember the name. I didn't look at the name.

Q. Where is it with reference to the Central Building?

A. Across the street on the corner.

Q. That would be across the main street to the north? A. Yes.

Q. Would you recognize the name as the Recreation? A. I wouldn't recognize the name.

Q. It is across the street—Rockefeller Street—isn't it? A. Yes.

Q. Just toward the north, isn't it? [165]

A. It is toward Seattle.

Q. I am sorry. I should have said south. I did say north. It is directly south? A. Yes.

Q. When you went up there, Crisler was talking to him? A. Yes.

Q. Who else was taking part in that conversation?

(Testimony of Walter G. Graben.)

A. Narcotic Agent Giordano, and I think Agent Goode.

Q. All of them but you were talking with Mr. Barnett?

A. I had perhaps some conversation with him, yes.

Q. Who made the statement about any sum of \$10,000?

A. Who made the statement?

Q. Yes?

A. Barnett made the statement. It had previously been discussed with Narcotic Agent Goode.

Q. Did you hear the conversation immediately before that or immediately after?

A. I didn't hear Agent Goode's conversation. I was there, though, when the sum of \$10,000 as the value of the drugs was stated by Mr. Barnett.

Q. Was that in answer to a question by Mr. Goode?

A. I don't know who put the question to him.

Q. And you don't know what the question was?

A. Yes; the matter of the sale of the drugs and the price was discussed, naturally. [166]

Q. But tell us the words that were used.

A. I don't recall the exact words.

Q. You don't recall whether someone asked, "Did you have an offer" or something of that kind.

A. I knew he had an offer.

Q. I am not asking you anything about what you knew, Officer. You realize the question I am asking you, here, is the question that was asked

(Testimony of Walter G. Graben.)

him, in which he answered something about \$10,000?

A. Yes, he was asked by either Mr. Crisler or Agent Goode—he was reminded or referred to the price of \$10,000. I don't just exactly remember the words that were put there, but that was—subsequent, it would only be natural that he would be asked that because he had just negotiated the sale.

Q. I am not asking you that at all. I am asking you to try to remember the words that were asked him.

A. I do not remember the exact words, but he was questioned relative to the narcotics in this box where the proposed sum of \$10,000 or \$8,000 was mentioned to Agent Goode.

Q. What was it—ten or eight?

A. I don't recall.

Q. Was it Goode or Crisler that asked him that?

A. I don't recall which one asked him. [167]

Q. Where was Graben at the time?

A. At the time of—

Q. At the time this talk took place.

A. This talk?

Q. Yes. A. I presume Naylor—

Q. Do you know where he was?

A. Well, after we took the tablets from him downstairs, he took the bus back to Seattle.

Q. He took the bus back? A. Yes.

Q. He didn't wait to come back with you folks at all? A. No, he did not.

Q. In other words, after you took these tablets out of his pocket, he left? A. He left.

(Testimony of Walter G. Graben.)

Q. You knew, of course, that he had accused Barnett of trying to sell these drugs to him, did you not?

A. That he had accused him?

Q. Yes. And you knew that that was the accusation that Mr. Crisler was making to the Commissioner, didn't you? A. That he had—

Q. That he was charging you with attempting to sell drugs.

A. I think he was charged with the sale—not attempting to sell them. [168]

Q. You knew he was being charged with the sale of drugs? A. Yes.

Q. And that is when he said to the Commissioner, "You are justified in filing the charge"?

A. Yes.

Mr. Dailey: That is all.

Mr. Sager: That is all.

The Court: Step down.

(Witness excused.) [169]

LEONARD A. DOUGLAS,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Sager:

Q. Will you tell us your name?

A. Leonard Douglas. [176]

(Testimony of Leonard A. Douglas.)

The Court: Do you have a middle initial?

The Witness: Leonard A. Douglas.

Q. (By Mr. Sager): Mr. Douglas, are you one of the defendants named in the indictment in matter?

A. Yes, sir.

Q. Do you know the defendant Ralph R. Macartney? A. Yes.

Q. Where did you become acquainted with him?

A. In the County Jail in Everett.

Q. About when?

A. Well, it was around the 6th of January.

Q. Of this year? A. Yes.

Q. Do you know the defendant, Mr. Barnett?

A. Not very well.

Q. Have you ever seen him before?

A. Not until that night he came out to the place.

Q. Well, you have seen him before?

A. That was the first time.

Q. There is placed before you what is Plaintiff's Exhibit 1 in this case, Mr. Douglas. Will you examine that and tell us if you have ever seen it before? A. Yes.

Q. Where did you get those bottles? [177]

A. At the Bayside Pharmacy in Everett.

Q. When?

A. That was the morning of the 25th of December, 1947.

Q. How did you get in?

A. Burglary, broke in.

Q. What did you do with those drugs following that?

(Testimony of Leonard A. Douglas.)

A. Well, I took them to my home and from there I took them up to North Bend. Then I brought them back and turned them over to Mr. Barnett.

Q. Where is your home?

A. Route 2, Snohomish.

Q. Before you turned them over to Mr. Barnett, did you have a conversation with Ralph Macartney concerning them?

A. Yes, I did.

Q. Where was that?

A. That was in the County Jail, Everett.

Q. About when?

A. It wouldd be about the 14th or 15th of January.

Q. How long were you in the County Jail at that time, Mr. Douglas?

A. Ten days.

Q. Do you recall what dates they were?

A. Well, it was from the 6th until about the 16th.

Q. What conversation did you have with Macartney concerning these drugs? [178]

A. I object to that, if Your Honor please, unless it be in the presence of this defendant.

The Court: What is the theory of admissibility asserted by counsel examining?

Mr. Sager: The same as in tthe case of Mr. Macartney, Your Honor. It is part of the conspiracy alleged in the second count, and the act of one conspirator is the act of another. There is evidence now which connects with Barnett as to the conspiracy.

(Testimony of Leonard A. Douglas.)

The Court: Does anyone connected with the case think that the court ought to at this time give the cautionary instruction which has been mentioned by the court previously?

Mr. Dailey: Most certainly, Your Honor. I renew my objection that I don't think there is any allegation which connects the defendant. A conversation between Macartney and this witness couldn't affect him.

The Court: The court overrules that objection and in connection with this question and in connection with a similar question asked Mr. Macartney yesterday, when that witness was on the stand and in effect to which a similar question was asked of that witness, counsel for the defendant, Mr. Dailey, excepted, the court gives to the jury the following cautionary [179] instruction:

You are instructed on the question of whether the alleged conspiracy existed as charged in Count 2 of the Indictment, you are not to consider any statements made or acts done by any defendant in furtherance of the alleged conspiracy in the absence of other defendants except against the individual making the statements or doing the acts unless you are convinced by the evidence beyond a reasonable doubt that the defendant so making such statements or doing such acts was authorized by another or other of the defendants to make those statements or do those acts in furtherance of the alleged conspiracy; and in such cases you will consider such evidence only against the defendant actually making

(Testimony of Leonard A. Douglas.)

the statements or doing the acts, and such other, and only such other defendants as you shall be convinced by the evidence beyond a reasonable doubt—if you are so convinced—authorized the making of such statements or the doing of such acts.

You will consider that cautionary instruction at all stages of this trial, and this instruction will be repeated to you as a part of all the instructions on the law to be given to you by the court later, and should be considered along with all of the other [180] instructions to be so given to you by the court.

Mr. Dailey: For the record, I take exception to that, if Your Honor please, upon the further ground that the instruction would not correct an error that might be allowed in the court because of this: this defendant, so-called, is not a defendant in this action, so that that instruction doesn't actually apply it seems to me. If he and Macartney were defendants in this action, it would be proper, I think, but in this case they are not defendants at all; therefore, no instruction could be put on it except the defendant who is here on trial.

The Court: The court rules that although the other two defendants, Macartney and Douglas, are not on trial at this time, that they are nevertheless named as alleged conspirators with this defendant who is on trial with respect to Count 2 in the indictment, and as to that count the objection to this evidence is overruled.

The jury is further instructed that you may not consider this question and this line of evidence now

(Testimony of Leonard A. Douglas.)

objected to so far as concerns the allegations in Count 1. You may not consider it as to the charges in Count 1. You may consider it under the conditions stated by the court only in [181] connection with Count 2—the so-called conspiracy count.

Mr. Dailey: Let the record show our exception?

The Court: The exception is allowed to the Court's ruling, overruling the objections.

Read the question to the witness.

(Last question repeated by the reporter.)

A. Well, we just got to talking about narcotics. I told him where I could get some. He knew where to get rid of them, and he said he would have—

The Court: Do not state anything except what he said and what you said.

A. (Continuing) He just said he would see his lawyer, and have him look up a fellow in Seattle and see them. He was a user.

Q. (By Mr. Sager): Did he say who this fellow was he was to see in Seattle?

A. Harvey Naylor.

Q. Did he tell you anything about Harvey Naylor?

A. No; just that he was a user and that was all.

Q. Did you tell him how much you had of these narcotics?

A. Well, approximately—I don't know just how much I had for sure, myself. [182]

Q. Did you make any statement to Macartney about the quantity?

(Testimony of Leonard A. Douglas.)

A. Well, it was around 800 grains of morphine, I know, and some cocaine.

Q. Did you have any further conversations with Macartney concerning it?

A. Just the way the money was going to be split is all.

Q. What was that?

A. Just the way the money was going to be split is all.

Mr. Dailey: I object, Your Honor.

The Court: The objection is overruled. The jury is directed to receive this evidence as previously indicated as concerns only Count 2 and not as having any bearing on Count 1.

The Court again instructs you not to consider it in connection with the charges in Count 1, but only under the conditions stated as to Count 2.

Q. (By Mr. Sager): You may proceed, Mr. Douglas. What was the conversation as to splitting it?

A. Oh, just three ways. Barnett was supposed to take his attorney's fees out of Macartney's share.

Q. Did you discuss with Macartney the value of this or what it ought to be sold for?

A. Oh, we figured around six or seven— [183]

The Court: Just answer yes or no.

A. (Continuing): Yes.

Q. (By Mr. Sager): What was that price?

A. Around six thousand dollars or seven thousand.

(Testimony of Leonard A. Douglas.)

Q. What did you say and what did Macartney say, as you recall?

A. Well, that is about all there was—just that it would come to around six thousand dollars or seven thousand dollars.

Q. How did you arrive at that sum?

A. Just figuring what we had and then what the price of it was.

Q. Was there any discussion about the price?

A. No.

Q. Was there anything said about what it should be worth per grain?

Mr. Dailey: I object to that as leading, if Your Honor please. I don't think that is proper.

The Court: The court thinks that counsel examining ought to make clear, before asking a leading question, at least that the witness' recollection as to details has been exhausted. The objection is sustained.

Mr. Sager: I am trying to direct his [184] attention to a particular phase of the conversation, Your Honor, and I don't know of any other way of doing it.

The Court: The ruling will stand.

Q. (By Mr. Sager): Have you told what you recall of that conversation, Mr. Douglas?

A. Well, he said something about \$10 a grain.

Q. Who said that? A. Macartney.

Q. You got out of jail when?

A. It was around the 16th of January.

(Testimony of Leonard A. Douglas.)

Q. What did you do following that with respect to this box of drugs?

A. Well, I went up to North Bend and got it and brought it back, and turned it over to Barnett.

Q. Did you do anything before turning it over to Barnett?

A. I just called him and told him I couldn't get it.

Q. Did you call him more than once?

A. Yes. I called him on a Friday night and then on a Saturday night.

Q. What were those conversations—what was the first conversation?

A. Well, I told him I had it, and I would try to get it in that night, but I couldn't make it. It was too foggy, and I didn't want to take a chance on driving [185] that far.

Q. What did he say when you told him?

A. He said, "All right."

Q. Where were you to meet him—or where were you to take him?

A. I was going to take it to his house.

Q. Did you know where it was?

A. Well, I looked the address up, yes.

Q. You say you weren't able to get in that night?

A. No, I wasn't able.

Q. Then what happened the next day?

A. The next day I had car trouble and I couldn't make it.

Q. So what did you do?

A. I called him up and told him.

(Testimony of Leonard A. Douglas.)

Q. What did you tell him?

A. I said I had a little car trouble and couldn't get in.

Q. What did he say?

A. He said he would come out and pick them up.

Q. Was anything else said on that second conversation?

A. He just asked the directions to the place and I told him.

Q. Following that conversation, what happened?

A. Well, he come out about a quarter of eight and pulled into the yard. I went out and found that it was Barnett, for sure, and then I went back and got the [186] narcotics and turned them over to him.

Q. What did you say?

A. Well, he said—I handed them to him and told him that they were there. He said—well, that he would see me in a couple of days at the "San."

Q. He said what?

A. He would see me in a couple of days up at the hospital.

Q. Was there anything else said about them at that time? A. No.

Q. Did you ask him anything concerning them?

A. No.

Q. Was there anything said about when or how he was to dispose of them? A. No.

Q. Is that the last time you saw Mr. Barnett?

A. That is the first and last time.

Q. Where are you presently confined, Mr.

(Testimony of Leonard A. Douglas.)

Douglas? A. In the penitentiary.

Q. Is that on a conviction and for what?

A. The Bayside Pharmacy.

Q. For the burglary of these drugs?

A. Yes.

Q. When were you arrested on that charge?

A. Well, on this charge it was—

Q. I don't mean on this charge here in court—
but on [187] the burglary charge of the Bayside
Pharmacy.

A. That was during February—just the date I
forget.

Q. Was it following your delivery of the drugs
to Mr. Barnett?

A. Yes, it was right after he got them.

Q. The ten days you were in jail before, what
was that for?

A. That was for burglary of a garage in Snoho-
mish.

Q. That wasn't this one? A. No.

Q. What was the sentence in that first case?

A. Well, it was eighteen months in Monroe and
it was suspended.

Q. Suspended on the condition that you do
what?

A. Well, I went to the hospital.

Q. What is your physical condition, Mr. Doug-
las? A. I have tuberculosis.

Q. How long have you had that?

A. Since 1940.

(Testimony of Leonard A. Douglas.)

Q. Since you have been at Walla Walla, have you been in the hospital there?

A. Yes; all of the time.

Q. You have pled guilty to the conspiracy charge in this case, have you? A. Yes. [188]

Mr. Sager: You may inquire.

Cross Examination

By Mr. Dailey:

Q. When you first talked to Macartney about it, where were you confined?

A. In the County Jail in Everett.

Q. Were you in the same cell?

A. In the tank, yes.

Q. Macartney is the one who told you, then, that the stuff could be sold and disposed of advantageously? A. Yes.

Q. He said that he knew of a man who would dispose of it for him? A. Yes.

Q. And that that man—that would be Naylor—and you and he would split it three ways except that Barnett would get his fees out of his, Macartney's share, is that right?

A. It was to be sold to Harvey Naylor; Barnett would sell it.

Q. I see. He told you Barnett would sell it. He never had spoken to Barnett about it in his life, had he?

A. That was after he talked to Barnett.

Q. How do you know it was? [189]

A. He said he would see Barnett.

Q. He said what?

(Testimony of Leonard A. Douglas.)

A. He said that he would talk to Barnett.

Q. He said that he would talk to Barnett. And that he knew someone who would dispose of it, is that right?

A. He said he knew a fellow in Seattle, and he would talk to Barnett to see about having Barnett sell it to this Harvey Naylor.

Q. Didn't you say, a little while ago, that he would have his lawyer look up Harvey Naylor and Naylor would sell it and you would split it three ways, isn't that what you said?

A. No.

Q. Well, isn't that what you agreed?

A. Macartney and I and Barnett would split it.

Q. What?

A. Barnett would sell it to Naylor.

Q. I see. But Barnett was not there when that was said to you? A. No.

Q. He took no part in any of that conversation at all? A. Macartney had talked to him.

Q. You never had talked to Barnett in your life, had you? A. No.

Q. And this night you called him up, you said you had a [190] package from Macartney, didn't you? A. Yes.

Q. And asked if you could leave it with him, isn't that right?

A. He knew that he was to get—

Q. Now, I am not asking you what he knew. I am asking you what he said to him. You called

(Testimony of Leonard A. Douglas.)

him and told him you had a package for Macartney, didn't you? A. Yes.

Q. And asked him if you could bring it in, isn't that right? A. I told him I would bring it in.

Q. You told him that you had a package from Macartney and you would bring it in.

Now, that was the first conversation that you had.

A. Yes.

Q. Now, did you call him that same night and tell him you couldn't make it in, or, did you call him the next night?

A. It was either—I called him twice, yes.

Q. All right. You didn't call him again, then, that first night, did you; you just didn't go, was that it?

A. I may have called him and told him I couldn't make it. [191]

Q. At any rate, you called him again Saturday and said you couldn't get in the night before and that your car was now broken down and asked him if he would come up and get that package, didn't you?

A. I told him my car was broken down and he said he would come out and pick it up.

Q. You told him you couldn't deliver the package because your car was broken down, didn't you?

A. Yes.

Q. And he said he would come out and pick it up? A. Yes.

Q. And you told him where to come?

A. Yes.

Q. And he came up? A. Yes.

(Testimony of Leonard A. Douglas.)

Q. And his wife came with him, didn't she?

A. I am not sure.

Q. Don't you know? You went out to the car and talked to him, didn't you?

A. Yes, but it was after dark and who was in the car with him, I do not know.

Q. Was someone in the car with him?

A. Someone was, yes.

Q. A woman or a man?

A. I wouldn't say for sure. [192]

Q. You were right there alongside of the car, weren't you? A. Yes.

Q. And you talked with him a minute and asked him if he was Barnett? A. Yes.

Q. And then said that you would go and get that package for Macartney, and went and got it, didn't you?

A. I told him I would go and get that package for him.

Q. You told him, then, when you brought it back, that it was a package for Macartney, didn't you? A. It was a package of narcotics, yes.

Q. What?

A. I told him it was a package of narcotics.

Q. You told him it was a package of narcotics at that time? Are you sure you did?

A. I am pretty sure, yes.

Q. Pretty sure. You pled guilty to the conspiracy charge here? A. Yes.

Q. And yet you only had these two talks with anybody concerning this, is that right?

(Testimony of Leonard A. Douglas.)

A. I talked to Macartney, yes.

Q. You never talked to Macartney again, did you?

A. Not after I was out of jail, no. [193]

Q. Then you never talked to Barnett again?

A. No.

Q. When was it you were arrested, then, and charged with stealing this from the Bayside Pharmacy?

A. Well, shortly after Barnett was arrested.

Q. How long after?

A. I was arrested the following Monday.

Q. You were already in jail the first time on a burglary charge for which you got a suspended sentence, provided you would go to the sanitarium?

A. Yes.

Q. And then you went back and pled guilty to robbery of the Bayside Pharmacy, and you are now in Walla Walla? A. Yes.

Mr. Dailey: That is all.

Mr. Sager: That is all, Mr. Douglas.

The Court: Step down.

(Witness excused.) [194]

Mr. Dailey: At this time, if Your Honor please, at the close of the Government's case on behalf of the defendant, I move the court for a judgment of acquittal as to Count 1 on the grounds of failure of proof. [197]

Mr. Dailey: Further, if Your Honor please, I wish to renew the motion on the further and sepa-

rate ground that they have offered no proof here that there was any illegal sale. [217]

The Court: I have answered that the law imposes that necessity. It does not remain a matter necessarily to be established by proof. The law establishes the requirement. That motion is denied.

COURT'S INSTRUCTIONS TO THE JURY

The Court: Members of the Jury, you have heard the testimony and the arguments of counsel. After the court instructs you, you will retire [323] to the jury room to consider your verdict. There is here involved an indictment containing two counts, naming three defendants, but you are concerned on this trial with the guilt or innocence of only one defendant, namely, the Defendant Garfield C. Barnett and no one else.

Although charged in the indictment with Barnett, the other defendants, Ralph R. Macartney Jr., and Leonard A. Douglas are not on trial before you, and the fact they are not has no bearing on the guilt or innocence of the defendant Barnett, and you will not permit the fact that Defendants Macartney Jr., and Douglas are not now on trial to influence you in determining the guilt of innocence of the Defendant Barnett as to the charges in each of these two counts of the indictment.

So far as the guilt or innocence of the Defendant Barnett is concerned, you will likewise disregard all statements of plaintiff's counsel concerning the fact that the defendants Macartney, Jr., and Douglas

are not being tried, or the reason why they are not being tried before this jury.

Throughout these instructions, the court when using the word "Defendant" intends to infer to Defendant Garfield C. Barnett unless the context [324] in particular instances requires a different meaning.

In this case there is one defendant, Garfield C. Barnett, on trial before you on the two counts of the indictment. To the indictment, and to each of the counts thereof, that defendant has entered a plea of Not Guilty. This plea puts in issue every material allegation of the indictment on which the defendant is being tried and casts on the government the burden of proving the guilt of the defendant on trial by the evidence beyond a reasonable doubt. The defendant is not called upon to disprove the charges of the indictment nor to prove his innocence. The indictment is merely the paper charge and formal accusation against the defendant which he has had no opportunity to answer until this trial. And the indictment is not to be considered by you as evidence in any sense against the defendant; and the fact that the indictment has been returned by the grand jury is not to be considered by you in any way as evidence against the defendant of the truth of what it states. The burden is always on the government to prove the defendant guilty by competent evidence beyond a reasonable doubt, [325] and that burden must be successfully met by the government before you can convict the defendant.

In this case you must consider separately each count of the indictment upon which the defendant is being tried. You must decide the guilt or innocence of the defendant as to each count separately, and if you have a reasonable doubt as to any material allegation of the particular count or counts of the indictment you are considering, it is your duty to acquit the defendant as to such count or counts. But if you have no such reasonable doubt concerning any such allegation, it is your duty to convict the defendant on each count as to which under the evidence you have no such reasonable doubt.

The defendant on trial, as well as every defendant in a criminal case, is presumed innocent of the charges contained in the indictment until he is proved guilty of the evidence beyond a reasonable doubt; and this presumption is one of his important rights, not to be ignored or lightly considered either by the court or by the jury. It is one of the important rights which the law accords all persons accused of crime. It attaches to them and continues with them throughout all [326] stages of the trial and throughout all stages of your deliberations until it has been overcome by the competent evidence in the case and until the guilt of a particular defendant has been established by the evidence beyond a reasonable doubt, notwithstanding the presumption of innocence with which the law clothes all accused persons. This applies to the defendant on trial here.

By the expression "reasonable doubt" is meant in law just what those words in their ordinary and

every-day use imply. They have no technical or legal meaning different from their ordinary meaning. A reasonable doubt is a doubt which is based upon reason or is a doubt that is not unreasonable, and not merely imaginary or caprecious. It is such a doubt as if entertained by a person of ordinary prudence, sensibility and decision, he would allow to influence him in transacting the graver or more important affairs of life, causing him to hesitate before acting thereon. It must be a real and substantial doubt, and it must arise out of the honest-minded, conscientious consideration and application of the evidence in the case, or from lack of evidence in the case. [327]

If from a fair and candid consideration of all of the evidence, you can say upon your oaths as jurors that you have an abiding conviction of the truth of the charge to a moral certainty, then you have no reasonable doubt and should convict. If you have no such moral convictions or if you entertain doubts for which sane and satisfactory reasons can be assigned in your own minds, then you must give the defendant the benefit of that doubt and find him not guilty.

You are instructed that while a defendant at the beginning of the trial is presumed to be innocent, yet if and when during your deliberations the proof shows his guilt beyond a reasonable doubt, then the presumption of innocence disappears from the case.

Even though the evidence in this case should engender in your minds a strong suspicion of the probability of guilt of the accused, this the defend-

ant cannot be convicted unless you are satisfied beyond a reasonable doubt of his guilt.

In considering the evidence, I charge you that it is not sufficient for you to find merely that the evidence adduced is consistent with the theory of the defendant's guilt, but before you can find him guilty you must believe beyond a reasonable [328] doubt that the evidence is inconsistent with his innocence and inconsistent with every other reasonable hypothesis except that of guilt.

If the testimony in this case, in its weight and effect, be such that two conclusions can be reasonably drawn from it, one favoring the defendant's innocence and the other tending to establish his guilt, then you should give the benefit of such doubt to the defendant and find him not guilty.

The law does not require the government to prove a defendant guilty beyond all possible doubt as such proof in many cases would be impossible. But the government must prove the defendant guilty beyond a reasonable doubt as defined in these instructions. A reasonable doubt may be created by a lack of evidence or it may be created by the evidence itself.

Count I of the indictment charges that the defendants Garfield C. Barnett, Ralph R. Macartney, Jr., and Leonard A. Douglas with having sold, bartered and exchanged to Joseph E. Goode the following narcotic drugs:

One bottle containing 189 $\frac{1}{2}$ grain morphine sulphate tablets.

One bottle containing 293 $\frac{1}{6}$ grain morphine sulphate tablets.

One bottle containing 501 $\frac{1}{4}$ grain morphine sulphate tablets.

One bottle containing 85 $\frac{1}{8}$ grain morphine sulphate tablets.

63 $\frac{1}{2}$ grain morphine sulphate tablets.

One bottle containing 177 grain powdered opium.

One bottle containing 51 $\frac{1}{4}$ grain codeine sulphate tablets.

One bottle containing 100 $\frac{1}{4}$ grain codeine phosphate tablets.

One bottle containing 100 $\frac{1}{2}$ grain codeine sulphate tablets.

One bottle containing 502 $\frac{1}{2}$ grain codeine sulphate tablets.

One bottle containing 40 copavin tablets.

One bottle containing 100 5-mg. dolophine tablets.

One bottle containing 39 copavin capsules.

One bottle containing 93 acetidine with codeine phosphate tablets.

"And said sale, barter, and exchange was not made [§30] pursuant to the written order of Joseph E. Goode upon a form issued for that purpose by the Secretary of the Treasury of the United States."

I instruct you as a matter of law that under the laws enacted by the Congress of the United States, it is unlawful for any person to sell, barter, or exchange narcotic drugs such as are named in Count I of the indictment except in pursuance of

a written order of the person to whom such narcotic drug is sold, bartered, exchanged on a form issued in blank for that purpose by the Secretary of the Treasury of the United States.

Count I of the indictment charges the defendant with the sale of certain narcotics just described to Joseph E. Goode on February 7th, 1948, at Everett, Washington. If you find from the evidence beyond a reasonable doubt that the defendant Barnett then and there had possession of the narcotics in question, intending to sell the narcotics, that said defendant and Joseph E. Goode then agreed upon a sale of said narcotics to said Goode, and agreed upon the price to be paid by Goode for the narcotics, that pursuant to such agreement the defendant Barnett delivered said narcotics to said Goode and that said Goode thereby then and there gained possession of said [331] narcotics and had them in his possession at the time of the arrest, then upon those conditions that transaction constituted a sale of the narcotics within the meaning of the acts of Congress prohibiting illegal sales of narcotics, even though said Goode had not yet actually paid over to defendant Barnett such agreed purchase price.

If you find from the evidence beyond a reasonable doubt that the defendant Barnett sold the drugs mentioned in Count I to Joseph E. Goode, and that such sale was not in pursuance of a written order of the said Goode on a form issued in blank by the Secretary of the Treasury of the United States, then in that event it is your duty to convict the defendant on Count I.

You are to determine in this case whether or not the plaintiff has established the fact of a sale between the defendant Barnett and the prosecuting witness Goode. If no sale was made between them, you will find the defendant Barnett not guilty of Count I of the indictment.

You are instructed that in order to find the defendant Garfield C. Barnett guilty of the offense charged in the indictment, it is not necessary that you find that he personally committed all of the acts charged. [332]

If you find beyond a reasonable doubt that he aided, abetted, counseled, commanded, induced or procured the commission of the crime alleged, then the defendant is just as guilty as if he individually perpetrated the crime, himself.

Count II of the indictment charges a conspiracy in that during the period from January 6, 1948, to February 7, 1948, at Everett, Washington, and other places in Snohomish County, Washington, and at Seattle, Washington, Garfield C. Barnett, Ralph R. Macartney, Jr., and Leonard A. Douglas conspired, each with the other to commit an offense against the United States, to wit, to violate the provisions of Section 2554(a) of Title 26 United States Code, in this, that the said defendants conspired to sell, barter and exchange the narcotic drugs described in the first count of the indictment to Joseph E. Goode, Harvey Naylor and other persons to the grand jurors unknown, such sale, barter, and exchange not to be made pursuant to the written

order of the person or persons to whom said narcotics were to be sold, bartered or exchanged upon a form issued for that purpose by the Secretary of the Treasury of the United States. [333]

Count II further charges that after the formation of the alleged conspiracy, the defendant committed certain overt acts as follows:

1. During the period from January 6, 1948, to January 16, 1948, at Everett, Washington, the defendants Leonard A. Douglas and Ralph R. Macartney, Jr., had a conversation with each other.

2. On or about January 17th, 1948, the defendant Garfield C. Barnett drove from Everett, Washington, to the home of the defendant, Leonard A. Douglas, at Snohomish, Washington.

3. On or about January 17th, 1948, at Snohomish, Washington, the defendant Leonard A. Douglas delivered to the defendant Garfield C. Barnett a box containing the drugs described in Count I of this indictment.

4. At some date between January 16th, 1948, and February 7th, 1948, the exact time being to the grand jurors unknown, at Everett, Washington, the defendants Garfield C. Barnett, and Ralph R. Macartney, Jr., held a conversation with Harvey Nylon. [334]

5. On or about February 7th, 1948, at Everett, Washington, the defendant Garfield C. Barnett gave to Harvey Nylon two bottles, each containing a narcotic drug.

6. On or about February 7th, 1948, at Everett,

Washington, the defendant Garfield C. Barnett delivered to Joseph E. Goode a box containing the drugs described in the first count of this indictment.

The foregoing are the allegations contained in Count II of the indictment, which allegations concern the alleged conspiracy.

A conspiracy, as the word is used in the conspiracy law and in Count II of the indictment, is an agreement between two or more persons acting upon a common purpose to commit an offense. In so far as this case is concerned, the particular offense described in Count II.

There can be no conspiracy of any kind unless three elements are present. Those are, first, the act of conspiring together of two or more persons; second, to commit the particular offense charged in the indictment; and third, the doing of something [335] in furtherance of the unlawful design, although it is not necessary that the objects of such design be accomplished. There is no such thing as one person conspiring. A person who alone plans and commits a criminal act is not guilty of conspiracy.

It is not necessary to render a person guilty of conspiracy that he be one of the original persons forming the conspiracy. He may have joined it after its formation; and if so, he thereby becomes as guilty as one of the original conspirators. However, to render such a person guilty under such law it is necessary that, after he has intentionally be-

come a member of such conspiracy, some act be done by one of the conspirators towards carrying the unlawful agreement of the conspiracy into effect.

In order to establish the guilt of the defendant on trial—under the conspiracy count—it is necessary that the government prove by the evidence beyond a reasonable doubt, first, that the conspiracy was formed as alleged and that it was entered into by the defendant Barnett and the others as charged. And second, that within the jurisdiction of this after that particular defendant Barnett became a member of such conspiracy, one or more of the overt acts of the conspiracy set out in the indictment were [336] committed as alleged in the indictment.

You will note that Count II of the indictment, according to the charged conspiracy, also sets forth a number of so-called overt acts. But you are instructed that here proof of an overt act or overt acts as charged in Count II of the indictment alone proves no conspiracy without further proof beyond a reasonable doubt of an unlawful agreement entered into by two or more persons named in the indictment to commit the unlawful acts charged in Count II; and this is true even though the evidence shows the overt act or overt acts alleged to be unlawful in themselves.

You are further instructed that such overt act or overt acts must be found from the evidence to be clearly referable to the unlawful agreement, pro-

vided you find from the evidence that such unlawful agreement did, in fact, exist as alleged in Count II of the indictment.

Even participation in the offense itself, which is alleged to be the object of the conspiracy, does not alone necessarily prove a participant guilty of such conspiracy. There must in addition thereto be proved beyond a reasonable doubt the unlawful agreement and participation therein by the [337] particular defendant with knowledge on his part of the existence of the unlawful agreement charged in the indictment. These matters must be proved by the evidence beyond a reasonable doubt. The unlawful agreement is the gist of the offense of conspiracy and unless you find that two or more of the persons named in the indictment so entered into the unlawful agreement specifically charged in the indictment, and actually participated therein, and that one or more of the defendants committed at least one of the overt acts alleged in Count II of the indictment, with knowledge and in furtherance of such unlawful agreement, you cannot find the defendant on trial guilty in this case.

It is not necessary that the government prove all the overt acts alleged but at least one of such acts must be proved by the evidence beyond a reasonable doubt: It is not necessary that the overt act or acts done shall successfully consummate the conspiracy. It is necessary that such act or acts be done for the purpose of carrying the conspiracy into effect,

whether the conspiracy is finally consummated or not.

The common design, purpose and agreement between the participants are the essence of the [338] conspiracy. To prove that a conspiracy existed and was in operation, it is not necessary to prove that two or more persons entered into a written or express agreement or made any formal declaration acknowledging membership in the conspiracy, but it is necessary to prove by competent evidence beyond a reasonable doubt that they cooperated in furtherance of a common unlawful plan previously formed.

A conspiracy may exist either to do something unlawful or to do a lawful thing in an unlawful way.

You are instructed that on the question of whether the alleged conspiracy existed as charged in Count II of the indictment, you are not to consider any statements made or acts done by any defendant in furtherance of the alleged conspiracy in the absence of other defendants except against the individual making the statements and doing the acts unless you are convinced by the evidence beyond a reasonable doubt that the defendant so making such statements or doing such acts was authorized by another or other of the defendants to make those statements or do those acts in furtherance of the alleged conspiracy. And in such cases you will consider such evidence only against the defendant actually making [339] the statements or

doing the acts and such other and only such other defendants as you shall be convinced by the evidence beyond a reasonable doubt—if you are so convinced—authorized the making of such statements or the doing of such acts.

Where an unlawful object is sought to be effected and two or more persons actuated by a common purpose pursuing a preconceived plan to accomplish that purpose act or work together in any manner in furtherance of the unlawful scheme, each party consciously participating therein is a party to the conspiracy, no matter what part he takes in the execution of the object or plan; and if and only if two or more persons are proven to have combined together for the same illegal purpose.

Any act done by one of the parties in furtherance of the original concerted plan and in reference to the common object is in contemplation of law the act of all of those parties. Likewise, if and only if the conspiracy has been established by the evidence beyond a reasonable doubt, every one of the conspirators is bound by the declaration and acts of the co-conspirators in furtherance of the conspiracy. And under those circumstances the acts and statements of one, done and made in furtherance of the conspiracy, [340] are the statements and acts of all the persons who are members of a conspiracy.

As to an individual defendant, mere knowledge of an unlawful conspiracy is not sufficient to make

such individual defendant a member of such conspiracy, but before he is deemed criminally liable therefor it must appear from the evidence beyond a reasonable doubt that he actively participated in such conspiracy with intent to further the objects thereof. In other words, he must knowingly and intentionally have participated in the conspiracy, if any you find from the evidence with knowledge of such conspiracy before he can be found responsible therefor criminally.

If you should find that a conspiracy was entered into as charged in the indictment by two or more of the parties charged and that one or more of them did some one or more of the overt acts charged in the indictment, to carry forward a conspiracy, then each and all of the persons who entered into such conspiracy or became a party to it prior to its commission and prior to the doing of the overt act would be guilty as a member of the conspiracy.

The main questions presented for your consideration, [341] concerning the conspiracy, may be said to be, first, did a conspiracy exist as charged in the indictment; second, if such a conspiracy existed were one or more of the overt acts as charged committed in furtherance of the conspiracy; third, if you find a conspiracy was established and one or more of the overt acts were charged were committed was the defendant on trial a member of said conspiracy?

A conspiracy such as is alleged in Count II herein is not an omnibus charge under which the

prosecution can prove anything and everything. The charge or accusation is limited by the terms of the indictment. The indictment charges but one plan and one conspiracy. And the defendant on trial cannot be convicted thereunder unless it has been shown beyond a reasonable doubt that he consciously became a member of that conspiracy as alleged. Further, the scope of the conspiracy must be gathered from the testimony and not from the averments of the indictment. The latter may limit the scope of the evidence but cannot extend it.

A conspiracy may be established by circumstantial evidence or by deduction from all the facts proved. The common design is the essence of the crime, and this may be made to appear when the parties [342] steadily pursue the same object, whether acting separately or together, by common or different means. If such conduct of the parties leads to the same unlawful result, if the parties acted together to accomplish something unlawful as charged, a conspiracy is shown even though individual conspirators may have done acts in furtherance of the common unlawful design apart from and unknown to the others. All the conspirators need not be acquainted with each other. They may have not previously associated together. One defendant may know but one other member of the conspiracy. But if, knowing that others have combined to violate the law, a party knowingly cooperates to further the object of the conspiracy, he becomes a party thereto.

Intent is an ingredient of crime. The forming of an unlawful conspiracy is an act of the mind. It is psychologically impossible for you to enter into the mind of the defendant and determine the intent with which he operated. You must therefore determine the motive, purpose and intent from the evidence which has been presented and from all of the facts and circumstances disclosed by the witnesses as testified to, bearing [343] in mind that the law presumes that every man intends the natural and legitimate consequences of his own acts. Wrongful acts knowingly or intentionally committed cannot be justified on the ground of innocent intent. An intent may be presumed on the part of those consciously participating in the conspiracy, if unlawful acts have been committed as charged and it is shown that such acts were a part of the plan and intended to carry forward the conspiracy charged in the indictment.

If you find from the evidence that the defendant Barnett accepted delivery from Douglas on behalf of his client Macartney, and that he did not intend to sell the narcotics involved in this case, and did not become a member of the alleged conspiracy or did not intend by his act to further the object of the conspiracy, he is not guilty of either charge in this case, and it will then be your duty to find him not guilty as to both Counts I and II of the indictment.

It is not necessary for the government to prove that there was exactly the quantity of narcotics in-

volved as each count of the indictment alleges. But it is sufficient if the proof shows that the defendant is guilty of a violation charged [344] with reference to any quantity of narcotics whether such quantity be more or less than the amount alleged.

There are two kinds of evidence, direct or positive and circumstantial. Direct and positive testimony is that which a person observes or sees or which is susceptible of demonstration by the senses. And circumstantial evidence is proof of such facts and circumstances concerning the conduct of the parties which conclude or lead to a certain inevitable conclusion. Circumstantial evidence is legal and competent as a means of proving guilt in a criminal case. But the circumstances must be consistent with each other, consistent with the guilt of the parties charged, inconsistent with their innocence and inconsistent with every other reasonable hypothesis except that of guilt, and when circumstantial evidence is of that character it is alone sufficient to convict. You will review all of the circumstances in the light of this instruction.

You are instructed that as to any evidence admitted showing a prior conviction of any witness who has testified in this case, you will consider such evidence only in so far as it affects the credibility of such witness and for no other purpose. [345]

It is for you to determine, in the light of such conviction, what weight and credibility should be given to the testimony of such witness.

I instruct you that the witnesses, Macartney, Jr.,

and Douglas, are charged in the indictment as co-defendants and are known in law as alleged accomplices with the defendant on trial. An accomplice is defined to be one concerned with others in the commission of a crime. If you find that any witness in this case was concerned with the defendant on trial in the commission of the offense charged, then such witness was an accomplice with the defendant on trial. It is a settled rule in this country that even accomplices in the commission of a crime are competent witnesses, and that the government has the right to present their testimony, and the jury may properly consider it. The testimony of accomplices, however, is to be received with caution and weighed with great care. And while it is true that a jury may convict on such testimony alone, yet the jury should not rely on it unsupported for a conviction, unless it produces in their minds a positive conviction of its truth. If it does, the jury should act upon it. [346]

In considering the testimony of the witnesses Macartney, Jr., and Douglas, you should consider their appearance and demeanor on the witness stand, their manner of testifying, the probability or improbability of the facts to which they have testified, their motives or interests in the case, whether their testimony was given upon the promise or hope of reward or of mitigation of their offense, their apparent fairness or lack of fairness, their apparent candor or lack of candor, the reasonableness or unreasonableness of the story such witnesses relate,

whether or not their testimony is consistent with the other evidence or admitted facts in this case, and any other fact or circumstances arising from the evidence which appeal to your judgment as in anywise affecting the credibility of such accomplice witnesses. You are therefore instructed that you are to receive the testimony of such accomplice witnesses with caution and examine it with great care. This does not mean, however, that you are arbitrarily to reject it. It only means that you are to receive it with caution and examine it with great care; and if, having done so, and if having considered such testimony in the light of all of these rules, you thereafter believe beyond a reasonable [347] doubt in the truth of such witnesses' testimony, then you are to give it the same credence as the testimony of any other witness.

Where a defendant is accused of a crime, if the evidence shows that his general reputation for **honesty and integrity in the community** where he resides was good prior to the commission of such an offense, that is also a circumstance that you should take into account in determining whether under all of the evidence you are convinced of the defendant's guilt beyond a reasonable doubt. But the court instructs you that if after consideration of all of the evidence in this case, including the evidence concerning the reputation of the defendant, the jury is satisfied beyond a reasonable doubt of the guilt of the defendant on trial, then it is your duty to return a verdict of guilty notwithstanding the fact that heretofore he has borne a good repu-

tation for honesty, truth and fair dealing and as a law-abiding citizen.

You are the sole and exclusive judges of the evidence and of the credibility of the several witnesses and of the weight to be attached to the testimony of each. In weighing the testimony of a witness, you have the right to consider his [348] demeanor upon the witness stand, his apparent fairness or lack of fairness, the apparent candor or lack of candor of such witness, the reasonableness or unreasonableness of the story such witness relates and the interest, if any, you may believe a witness feels in the result of the trial and any other fact or circumstance arising from the evidence which appeals to your judgment as in anywise affecting the credibility of such witness, and to give to the testimony of the several witnesses just such degree of weight as in your judgment it is entitled to.

You will be slow to believe that any witness has testified falsely in the case but if you do believe that any witness has wilfully testified falsely to any material matter, then you are at liberty to disregard the testimony of such witness entirely except in so far as the same may be corroborated by other credible evidence in the case.

The defendant having testified as a witness, the foregoing relating to testimony of witnesses and the weight of testimony applies to the defendant in his testimony as well as to all of the other witnesses in the case.

You are instructed that the government does not

desire to have you bring in a verdict finding the [349] defendant guilty unless the verdict is supported by the evidence beyond a reasonable doubt. But that neither does the government want a guilty defendant to escape.

It is the duty of the court to instruct you as to the law governing the case and you must take such instructions of the court to be the law. You will consider such instruction as a whole and will not select any one of them and place undue emphasis on that one instruction. You will consider all evidence admitted by the court and now before you, and you will disregard all evidence and exhibits offered but not admitted by the court, and all evidence stricken out by the court.

In this connection you are instructed that you are not called upon to pass upon objections and exceptions made or taken by counsel and you should not allow the making of objections and the taking of exceptions by counsel to influence or confuse you.

In your deliberations and in reaching your verdict you should act only upon the evidence which has been admitted and is now before you and the law as it has been given to you by the court in these instructions. Statements, if any, by counsel and the court unsupported by your own recollection of [350] the evidence you will disregard. Likewise, you will disregard all statements made by counsel and the court to each other during the trial.

While it would be proper for me as a trial judge to analyze the testimony and to give you my under-

standing of it—which, however, would not be binding upon you—my purpose is not to intimate to you any opinion I may have of any factor or the weight of any evidence; and if I refer or have referred to any facts in the case, it will not be and has not been for the purpose of indicating any opinion I may have of the facts but simply to illustrate some proposition of the law which is involved with the facts.

It is your duty as jurors to confer with each other freely and frankly about and to discuss together honestly the questions involved in this case for the purpose of agreeing, if you can honestly do so, upon a common verdict.

In the end, however, the jury's verdict must be the verdict of each and all twelve of you. A verdict representing the opinions of any lesser number is not a lawful verdict.

The law does not contemplate that any one of you will surrender his or her own individual opinion [351] about the guilt or innocence of the defendant so long as such one of you personally has a reasonable doubt about the matter. Regardless of what the opinions of your fellow jurors may be, as long as you have a reasonable doubt about the guilt of the defendant—if you have such reasonable doubt—it is your duty to vote for an acquittal.

It is not the function of the jury to determine the kind or amount of punishment of a defendant found guilty by the jury. Under the law it is the duty of the court, unassisted by the jury, to determine such punishment. It is for the jury only to

decide the guilt or innocence of the defendant. If by the evidence beyond a reasonable doubt you are convinced of the guilt of the defendant now on trial before you as to one or more of the counts of the indictment, it will then be your duty to convict him on such count or counts, if any, as to which you are so convinced.

I might add this further thought to the jurors by way of an explanation of the present status of the case, as well as by way of an instruction on the law, counsel in the case of both sides have brought before the court and jury all of the admissible evidence that they know of to properly enable the [352] jury and the court to perform their respective functions. The court has fully instructed the jury on the law applicable to the case. It is not known to the attorneys or the trial judge what more could be done to properly enable the jury to perform its duty. You now have all the means necessary to a decision. In this court the instructions in written form are not sent to the jury room.

Also written transcripts of the testimony, orally stated from the witness stand, will not be sent to the jury room with you. It is for the jury to remember the evidence and the court's instruction.

The indictment in this case will be sent to the jury room with you merely to show you the paper charge against the defendant, but is not to be considered as evidence against him. You will take with you to the jury room the exhibits in the case and this form of verdict (indicating) which has been prepared by the Clerk of the Court for the

convenience of the jury. The verdict is in the usual form. As to each count on which defendant is being tried, before the word "guilty" is a blank space. You will write in that blank [353] in each instance the word "is" or "not" according as you find.

It will require your entire number to agree upon your verdict and when you have so agreed you will cause your verdict to be signed by your foreman whom you will elect from among your number immediately upon retiring to the jury room and return with your verdict into open court.

[Endorsed]: Filed July 16, 1948. [354]

[Endorsed]: No. 11954. United States Court of Appeals for the Ninth Circuit. Garfield C. Barnett, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed July 22, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals for the
Ninth Circuit

No. 11954

GARFIELD C. BARNETT,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S DESIGNATION OF POINTS
TO BE RELIED UPON ON APPEAL AND
PORTIONS OF RECORD TO BE
PRINTED

Comes now Garfield C. Barnett, the appellant herein, and hereby designates the points to be relied upon on appeal and portions of the record to be printed.

Appellant herein claims that the trial judge committed error (1) in allowing testimony of Ralph R. Macartney, Jr., and Leonard A. Douglas as to conversations had between them not in the presence of defendant; (2) in taking over examination of witness, Harvey Naylor and calling undue attention thereto; (3) in denying appellant's motion for ac-

quittal at the close of plaintiff's case, and (4) in denying appellant's motion for judgment notwithstanding the verdict or for a new trial.

* * * *

Dated this 22nd day of July, 1948.

/s/ DAILEY & CONROY,
Attorneys for Appellant.

Service admitted and copy received this 23rd day of July, 1948.

/s/ J. CHARLES DENNIS,
United States Attorney.

[Endorsed]: Filed July 24, 1948. Paul P.
O'Brien, Clerk.

